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THE
DUTY and POWERS
OF
Justices of Peace,
IN
This Part
OF
GREAT-BRITAIN
CALLED
SCOTLAND.
WITH

An *APPENDIX* concerning Weights
and Measures.

By *WILLIAM FORBES* Advocat.

EDINBURGH,

Printed by the Heirs and Successors of *Andrew Anderson*
Printer to the Queens most Excellent Majesty: And to
be sold at *John Vallanges* Shop, on the North side of the
Street, a little above the Cross, *Anno Domini*, 1707.



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T O T H E
Right Honourable
Sir David Dalrymple
O F
H A L E S,

Knight Baronet, Advocat, and Her
Majesty's Solicitor.

S I R,

A Long Epistle before this
very (very) little Book,
would seem as Ridiculous
as a little House with a lofty Porch.
I must therefore put off to another
Occasion, the Expressing my Re-
sentment of the many Demonstra-
tions of your Favour to me, and
my just Esteem for so Learned and
Eloquent a Lawyer, so good a Pa-
triot, and so able and necessary a
State-Physician, as you have ap-
proven your self. Give

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Give me leave, Sir, only to say, that a less Figure in the World could not have been expected from your Sound, Brisk and Excellent Parts, Refined by more than ordinary Advantages of Education. Allow me also to compliment you upon your being now in a fair way to get rid of the Doctors about ye: and at the same time let me wish you confirm'd Health and Strength, to prove a Happy Instrument of the Prosperity of this your Native Countrey. I hope that, since by your Advice I write this Manual of Instructions to our *Justices of Peace*, you will not grudge it your Countenance. And I am ever,

SIR,

Your most Humble, and
most obliged Servant,

WILLIAM FORBES.

T H E P R E F A C E.

JUSTICES of the Peace, are so many Godly, Wise, and Virtuous Gentlemen, of good Quality, Moven and Report, as the Sovereign pleases to Name, for keeping of the Peace of the Shire where they Live (a). Their Office (which their very designation implyes) is something like that of the *Irenarchæ* among the Romans. But as the Formers Interest in the Country is a surer Pledge of Fidelity. in the Discharge of their Trust, than could have been Expected from the Latter, who were only a sort of Military Magistrates subordinated to the *Præsides Provinciarum* for keeping the Provinces Quiet: so their Station is more Honourable, in so far as like the Roman Censors, they can punish immorality, &c.

(a) So they are Described in the Act 7 par. 20.
F. 6.

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They are Called Justices of the Peace, for that the doing of Justice to preserve the publick Peace, is expected from them, and also *Commissioners of the Peace*, because their Authority flows from the Sovereigns Commission.

They have four ordinary Terms of Meeting yearly, called the General Quarter-Sessions. And sometimes also they Conven upon Extraordinary Occasions, *pro re nata*, when there is a Necessity for it.

We had no Formal Office of Justice of Peace, till King *James* the Sixth's Time: The Charge of Maintaining the publick Peace of old being annexed only to particular publick Offices; where of it continues yet a Cumulative Consequence. But, at length, for Extirpating the Inveterate Barbarous Custom of Deadly Feuds, and Controversies of Neighbourhood, in *Scotland*, which frequently were attended with Fatal Consequences; That Prince Introduced and Settled Justices of Peace and Constables among us, after the Model of *England*. Where their first Bceing is dated from 1327, the first Year of *Edward 3d*: And their Authority being much
inlarg'd,

inlarg'd, during the Civil Wars of the Houses of *York* and *Lancaster*, from what it was at first, 'tis now at that just Pitch of Consistency, as if duly executed, no part of the World can boast of the like Subordinated Government.

In *England*, some of the Justices, whom the Sovereign doth most Respect and Confide in, are called Justices of the *Quorum*, from these Words in the Commission, *Quorum, A, B, C, D. Unum esse volumus*, without whose Concurrence, the rest cannot proceed in some Cases of Importance. And one of these is made *Custos Rotulorum*, whom the Commission of the Peace enjoins to cause bring before himself, and his Fellows, at certain Days and Places, which any two or more of them should appoint, the Writs, Precepts, Processes, and Inditements therein mentioned. Every *Custos Rotulorum* names one to be Clerk to the General Sessions of the Peace, during his Office: Whom yet the Justices of Peace, at their General Quarter Sessions, may Suspend or Discharge for Malversation; And may name another Clerk, if the *Custos Rotu-*
lorum

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lorum fail to supply the Office before the next General Quarter Sessions. But tho the Clerk of the General Sessions be named by the *Custos Rotulorum*, as his Deput: every Justice of the Peace, or so many as can Judge may chuse their own Clerk in Extra-Sessional Business.

I don't find, within the Compass of my Observation, that ever we had any Justices of the *Quorum* in our Commissions of the Peace. But that we had such a *Custos Rotulorum* as they have in England, is clear from the first Commission for keeping of the Peace within the Shire of Edinburgh, under the Great Seal, dated August 28. 1610, wherein Sir James Foulis of Collingtoun, one of the Justices of Peace therein-named, was appointed *Custos Rotulorum, cum Potestate nominandi Amanuensem, seu Scribam, qui scripta omnia ad hujusce Commissionis Executionem spectantia in notam redigat, & publicis Schedis inserat.* Which Authentick Commission was kindly communicated to me by his Successor, the present Sir James Foulis of Collingtoun. Again, the *Custos Rotulorum*, by two
Acts

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Acts of Parliament (*a*), was made Conveener of the Justices of the Peace upon extraordinary Occasions : And by the Instructions 1655, had power to appoint the place for the Quarter Sessions.

The Justiceship of Peace, after its first Establishment here, went in Desuetude for want of due Execution, tho Ratified with all its powers in the Parliament 1633. To tell the Reasons whereof, as beyond my present purpose, I refer to those who have penetrated into the Politick of our Civil Constitution. But *Oliver Cromwells* Instructions to the Justices of Peace and Constables in the Year 1655, did Inspire the Office with more Life and Efficacy, than ever it had before or since.

Which Instructions, for the Reasonableness thereof, were almost Copied after, *Mutatis Mutandis*, in the Act of Parliament 1661. And the Office hath been, in a manner, kept up since then, tho, alas! to very little purpose. And to what other Cause can we impute the not Execution of many good Laws,

(*a*) *Ja. 6. Parl. 22, Cap. 8. Ch. 2, Parl. 1. Sess. 1. Cap. 38.*

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made here for the Incouragement of Trade and Manufactures, than to the Languishing and Deadness of the Justiceship of Peace?

But now, by a late Commission & Proclamation of Her Majesties Privy Council in this part of *Great Britain*, the Power and Jurisdiction of Justices of Peace is set upon a new Foot, and extended to what belongs to the Office, in relation to the Customs and Excise, by Laws made in *England* before the Union.

The Authority of our Justices of Peace is, in some Cases, Ministerial and Executive, when they are commanded to do their Duty by some Higher Power. As when the Privy Council gives them Direction about the making of new Highways to Parish Churches; Or about the Building of a Prison-house in the Head-burgh of a Shire, where there was none before.

In other Cases they have a Judicative Power to Decide in Matters within the Verge of their Instructions. And this Judicative Power is, in some things, like that of the *Roman Judices Pedanei*, tied to the Observance of a *Formula* of Procedure

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Procedute. So, they can only Judge Breakers of the Peace, under the Degree of Noblemen, Prelats, Counsellors, or Senators of the Colledge of Justice ; And charge those of a higher Degree to find Caution for the Peace. They are Ordained to proceed against Cutters and Destroyers of Planting, Green-wood, Slayers of Red and Black-Fish, &c. by virtue of Commissions to be granted to them for that Effect. They may Fine Hostlers for Refect of Rebels, Vagabonds, &c. (if not punished within fifteen days by the Baron or Master of the Ground) in fourty shilling *Scots* for the first, four pound for the second, and ten Merks, with the Loss of Liberty to Brew, for the third Fault. They may Tax Parishes for the Maintenance of the Poor in a Weekly Proportion, not under one shilling, or above five, &c.

Some things again, the Justices are left to Decide, according to their Discretion : For that all the Circumstances could not be fore-seen. So they are allowed to punish, according to their Discretion, such as wrong the Highways,

ways, or refuse to concur for mending of them. And may give Orders about what is fit to be done in time of Plague, and may make Acts against notorious Drunkards, and punish Contraveeners. They can also Regulate Servants Fees and Tradesmens Prices, &c. But this Discretion of the Justices of Peace is not Unaccountable and Arbitrary, according to their private Affections, (which would open a Door to Corruption and Oppression) but limited within the Rules of Reason and Law. And therefore, tho the Justices be Impowered to punish, according to their Discretion, such as refuse to concur for mending the High-ways.: That is expressly so qualified in the Statutes, that if the Rigour or Severity of their Proceeding afford Ground of Complaint, they themselves are Censurable by the Privy-Council. But then again, their Sentence in Cases of the Excise, is final, and there lies no Appeal from it.

Our Advantage by these Country Magistrats, is obvious to any thinking person, who considers the good Effects of their Wise and Benign Administration

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in *England* ; And the vast Inconveniencies we and others have hitherto laboured under, for want of such a well ordered Magistracy, to put the Laws in Execution against the Disorderly. Justices of Peace seem rather calculated for preventing Delinquencies, than for punishing Delinquents. Their Authority will fright People into their Duty, and keep up the Credit of Law and good Manners. Nor is it very probable, that they will abuse this Authority: Seing Disorder and Licenseness in the Country would dash their own Injoyments. Again, the Justices of Peace are a Check upon the Judge ordinary, in Matters to which they are competent. For his Negligence to do Justice upon Offenders within fifteen days, is suppliable by them. And if his Sentence against a Delinquent bear no Satisfaction to the Party Lesed, they may Modify a reasonable Satisfaction. Or if the Satisfaction Ordained by the Judge ordinary, be not answerable to the Wrong done ; They may get it rectified, upon a Representation to the Council. And they may get Judges Malversing, by Collusion with Criminals, to be Censured and Punished. Tho

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Tho the Powers of our Justices of Peace are not generally considered, to be so ample, as that of the *English* Justices; Because of the many particular Powers expressly given to the latter by Statute: Yet the general Rules given to the former by our Acts of Parliament, do often include as much, and sometimes more Authority. For Example, their general Power to make and execute Acts against Excessive Drinking is (full out) as great as what the *English* Justices can do for Curbing that Vice. And the general Clause allowing the former to prescribe what is to be done in time of Plague, and to punish the Disobedient, is as Extensive, if not more, than all the many *Proviso's* of Authority to the latter; For shutting up and relieving Infected Persons, appointing Searchers, Watch-men, Examiners, Keepers and Buryers, which is not extended over Persons within the Precincts of either of the two Universities, or any Cathedral Church, or the Colleges of *Eaton* or *Winchester*.

But then, if our Justices of Peace have less Powers, than those in *England*; They have not such a Multiplicity of Statutes

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Statutes to Consult, in order to find what they ought to do, as the former are oblig'd to croud their Memories with. Nevertheless I cannot, for the present, help thinking, (with all Submission to the superior Wisdom of the Parliament) that it were our Interest to have Justices of Peace among us, with the same Powers they have in *England*: And that perhaps it were the Interest of *England*, to have these scattered Powers reduc'd, and summ'd up in one Statute, by way of Instructions, after the fashion of our Acts 1617 and 1661, to render the Execution of the Commission of Peace more easy; Many Persons being loth to procure Peace to others, with their own Disquiet.

In order to describe the Office of a *Constable*, I shall not be much solicitous about the various *Criticisms*, that has been spent upon the Derivation and Pedegree of the Word and Office. But shall content my self to notice, That Constables are Men clothed with Authority, Resembling that of the old *Latrunculatores* among the *Romans*, and of the *Prevot de Marechaux* in *France*. They differ from the *Tithing-Men*, or *Head-Boroughs* in *England*, in this, That the latter are less Honourable, and cannot meddle where a Constable is present, except as his Assistants; But are the only Officers for the Peace in Towns, where there are no Constables. Constables are Officers subservient to the Justices of Peace, either for bringing Criminals before them, or carrying them by their Command to the common Prison: Which, if they refuse to do at the Desire of the Justices, themselves may be Committed and Fined. Excise-men must have a Constables Concurrence, when they enter into any Brew-house by Night to Gauge Fats or Vessels, or break open Doors in the Day-time, upon Suspicion of Secret Conveyance of Worts. In *England*, the Constables Watch a Nights, and Walk their Rounds in their several Parishes, having the chief Command of the Watch. Whence a Constable came to be called a King of the Night.

This little Treatise, (if it may be called a Treatise) is divided into three Chapters. The first Exhibites an Abstract of the Duty and Powers of Justices of Peace, out of our own Acts of Parliament and two Council Proclamations (a), with Observations thereon. The Matter of the Customs is the Subject of the second Chapter. And in the third, I have Treated distinctly and fully of what I thought fit to be known about the Excise in the Order following, 1. I consider the Managers, and inferior Officers of the Excise, particularly the Gaugers; And shew what they can and ought to do in their respective Capacities. 2. The Persons lyable to Excise, and the Legal Checks upon them, to prevent their Eluding the same, fall under Consideration. 3. Excisable Liquors, the several Rates or Quantities of the Excise Duty, and the Allowances or Eases given

(a) viz. One in the 1655, and one in this present Year,

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to those lyable for the same, are spoke to. 4. I make it my Business to Discourse of the Entry of Excisable Liquors, and the payment of Excise. And, 5. Of Action and Diligence competent about Excise Matters.

To all which, an *Appendix* concerning Weights and Measures is subjoined, but not so full as was design'd. For an Emergent difficulty oblig'd me to interrupt and cut off the same, without Adjusting and Proportioning the *Scots* and *English* Measures, which was the thing mainly intended by the *Appendix*.

In short, the Reader will find in the following Sheets abundance of Matter couch'd in little Room. And this may suffice for a Taste of what is to be expected therein.

I know no more I have to Advertise my Reader of, save that He'll find, as is usual, the *Scots* Statutes cited with respect to the Parliament they were made in, and the *English* Statutes cited with respect to the Year of the Sovereigns Reign.

But some will be apt to say, That, when I undertook to Dictate to the Justices of Peace in so Multifarious a Subject, and particularly in the Matter of Excise, I had not sufficiently Gag'd my own Capacity: And perhaps 'tis true. All the Excuse I have at hand is, That the Task was given me by a Worthy and Knowing Person, who thought I might Rub through it; It is performed as well as I could; And something of this Nature was much wanted here. For none of the several Books about the Justicehip of Peace, writ successively in *England* by Mr. Marrow, Sir Anthony Fitzherbert, Mr. Crompton, Mr. Lambard, Mr. Dalton, and W. N. of the *Middle-Temple* Barrister, are of great present Use to us. In regard, That 'in any before the two last, there is nothing concerning the Customs or Excise, which are the only Matters, wherein our Justices of Peace have, as yet, got *English* Justice-Powers: And these two Books (tho Bulky enough) are neither full nor exact upon the Customs or Excise. I have made this *Innuendo*, not from any Inclination to Censure or Derogate from so Learned and Industrious Authors; But that the World may not, upon their Establish'd Reputation, Implicitly carp at this *Manual*, when they find other things therein, and somethings otherways expressed.

(I)

T H E

D U T Y and P O W E R S

O F

Justices of Peace,

I N

SCOTLAND, &c.

C H A P. I.

An Abstract of the Duty and Powers of Justices of Peace, out of our own Acts of Parliament, and the late Commission and Proclamation.

THE Seventh Act of King *JAMES* the sixth's Twenty Parliament, *anno* 1609, Ordains the Sovereign, with Advice of His Privy Council, to appoint yearly, in every Shire, according to the extent thereof, a certain Number of Wise and Virtuous Gentlemen of good Quality and Report, Residing therein, to be Justices and Commissioners for keeping the Peace, and suppressing Disorders; with power to command all Persons suspected to have a Design to make Trouble or Disorder, by gathering together idle and disorderly Persons, or by publick wearing of forbidden Weapons, or the like Swaggering Behaviour, to

A

find

find Caution under competent Penalties to observe the Peace, and compare before the Justices or Privy Council, to answer for their Behaviour: And if need were to Require the Assistance and Concurrence of the Shire, for quashing of Tumults, apprehending or incarcerating Delinquents; Which Delinquents, and such as refused their concurrence to the Justices, were to be arbitrarily punished as the Privy Council thought fit. Again, these Justices of Peace were ordained to give true Advertisement and Information to the Lords of Council, Commissioners of Justiciary and others whom it effeirs, of the Names of the best Witnesses and Assizers to be summoned in all Crimes and Disorders falling out in the respective Shires, that such as are unable to Travel or ignorant may not be unnecessarily drawn from their own Houses and Affairs.

2. Thereafter King *JAMES* the sixt gave the following Instructions to the Justices of Peace and their Constables, which were Ratified in his 22 Parliament *anno* 1617, *viz.* 1. That both should Qualify themselves by taking an Oath *de fidei* at their Admission. The Justices of Peace must Swear, That according to their Knowledge, Wit and Power, they shall do equal Right to Rich and Poor, conform to the Laws and Customs of the Land; and shall not be of Counsel with any person in any matter depending before them; and that they shall keep the Sessions every Quarter, or oftner if Required, not having any just ground of Impediment; and shall faithfully discharge their Duty, leaving nothing undone that may tend to the Preservation of the Peace. The Constables must Swear that they shall faithfully discharge their Office, without respect of Persons, and above all things regard the keep-

ing

ing of the Peace, and give true and due Information of any breach thereof to the Justices at each of their Quarter Sessions. 2. Any one Justice upon complaint of a person Swearing that he hath just cause to dread Harm from another, may bind that other under a Sum, to the Peace, and commit him till he find Surety (a): Or without complaint the Justice may upon credible Information of appearance of trouble among persons, bind all to the peace; unless they purge themselves of mutual grudge by a Declaration upon their Conscience. And these Bonds are to be delivered at the next Quarter Session to the Clerk of the Peace to be kept and Recorded by him. 3. A Justice of Peace may call and compel any Person, whose Rent exceeds not Ten Chalders of Victual or 1000 Merks, to compare before him. And if any Landed Gentleman of a higher Valuation, refuse to give Obedience, the Justice may inform some of the Privy Council that he may be fined. 4. If the Sheriff or Baillie hath sentenced or fined an Offender, the Justice hath no power to sentence or fine over again for the same fault or crime: But if no satisfaction to the party lesed be ordered by the Judge Ordinary, the Justice may modifie a reasonable satisfaction, in a pursuit for the same before him. Or if the satisfaction be not condign, or answerable to the Offence and wrong sustained, the Justice may re-

(a) Mr. Dalton in his Country Justice (Chap. 117) Observes, That a Husband may get his Wife, and a Wife her Husband, obliged to find surety for the Peace; and that one Justice may bind another to the Peace; Yea, even that a Justice may grant surety of the Peace against his own Wife. Surety for the Peace differs from surety for good Behaviour or *de se bene gerendo*; in that, the latter includes the former and something more.

present it to the Council, that they may take order therewith. 5. If any person thro' collusion with the Judge be quitted by an Assize, the party once cleared is not to be further questioned before the Justices; but upon their Information the Judge is to be called, censured and punished by the Council. 6. The Justices may judge all committers of Riots and breakers of the Peace, under the Degree of Noblemen, Prelates, Counsellors or Senators of the Colledge of Justice: And may punish and fine according to the Quality of the Crime and the Offenders Estate, upon his being holden as confest, if personally apprehended at the first Citation, or upon a second Citation at his dwelling-house, tho not personally apprehended (*a*); and may charge those of a higher Degree to find caution for the Peace, and for their compearance before the Council (*b*). And a charge to find caution being contraveened by some intermediat Deed, before the finding of caution, the Contraveener shall be answerable for the Penalty, as if caution had been found. 7. They should execute the Acts of Parliament a-

(*a*) By our Custom, no Person can be holden as Confest, except personally Apprehended, lest Men should Inadvertently be drawn into Snares by Citations at the Dwelling-House. But here two Citations at the Dwelling-House are made equivalent to one that's personal. Because the Subject of Contraversty in Justice of Peace Courts, is but small. (*b*) Perhaps now, since the Union, our Justices cannot oblige Peers to find Caution for keeping the Peace, but must be content to take their Word of Honour for it; Because the Law of *England* requires no more from Noblemen, as if they were of a more than ordinary Peaceable Disposition, and would think it below them to break the Peace. Yet Mr. *Dalton* (Country Justice, Chap. 117.) is of Opinion, That *English* Peers may be got bound to the Peace by a *Sub Pena* out of the Chancery, and that if they refuse to compear upon the Serving of the said Writ against them, they may be Arrested by a *Capias*, or Attachment, for the Contempt,

gainst wilfull or sturdy Beggars (a), Vagabonds, idle Persons, Egyptians, (b) and their Resettlers, or Setters of Houses to them. 8. They are to order the mending of highways (c), to and from Mercat-Towns or Sea-ports, and to maintain the ways to Parish-churches: And where they find necessity for a new way to inform the Council, and receive their Direction; They may punish with Discretion such as wrong the High-ways or refuse to concur for mending them (d). The breadth of of High-ways to Mercat-towns is declared to be Twenty Foot at least, and such as are larger are not to be altered or straitned. 9. The Laws against Cutters and destroyers of Planting, Greenwood, Orchards, Gardens, Hainings, Breakers of Dove-houses and Cunningares, Steallers of Bees or Hives, Users of setting Dogs, Slayers of

(a) Tho our Law be very Careful of, and Charitable to the Impotent and Miserable Poor, by providing for their Intertainment: We have Copied after the Civil Law (*Tit. Cod. de Mendicantibus Validis, Nov. 80.*) and Custom of other Nations, in making severe Sanctions against Sturdy Beggars. (b) *Egyptians* are a parcel of Vagabond Thieves, who go up and down with Blackened Faces speaking Gibberish, and telling Fortones. They were Sentenc'd to Banishment in *France, Spain, and Germany*, under the respective Names of *Bohemieunes, Gittani, and Zigeuni*; And were Com-manded to Run this Countrey without Returning, under Pain of Death, *Act 13. Parl. 20. Ja. 6.* (c) By High-ways here are understood the Queens High-ways, which only are the Subject of the Justices Care. For the Servitudes of *Via* a Cart-way, *Alia* a Foot and Horse-way, and *Iter* a Foot-way, are Regulated and Determined by the Civil Law, and the privat Pactions of Parties. Among the *Romans*, The Censors were the Inspectors of the Publick Ways: And these being Diverted by other Business, the Care was Committed to the *Quatuor Viri Viarum Curandaram*, in place of whom, the *Curatores Viarum Singularum extra Urbem* Succeeded. And the Civil Law Allowed several Interdicts against the Stoppers of High-ways. (d) Yet they are not Allowed to Use their Discretion Arbitrarily, but Equirably; For if they be Unreasonably Severe, themselves are Censurable by the Privy Council.

Red and Blaek Filhes and Smolts in forbidden time, Fowling in other Mens Lands, inaking of Muir and Mossburn, setting of Cruives and Nets in Waters and Damms, and the using of cruives and Zairs in forbidden time, are to be executed by the Justices by virtue of Commissions to be granted to them *Salvo Jure Cujuslibet*, for trying and fining upon Probation by Witnessees or Oath of Party, such of the said Offenders, as they by their Instructions may proceed against, or are not conveened before any other Judge (a). 10. They should at least once a Year inform the Council, Treasurer or Advocat, of Forestallers or Regraters of Mercats (b); and the breakers of the Acts against Malt-makers (c). 11. If Barons and Heretors punish not Hostlers dwelling upon their Ground, for reset of Rebels at the

(a) The Justices are not in Use to Proceed against Cutters of Green Wood, Slayers of Red and Black Fish. &c. Because the Act Appoints Commissions to be granted them for that Effect, and no such Commission was ever granted. (b) Tho Forestallers and Regraters, called *Dardanarii* in the Civil Law, be commonly Confounded as one and the same: They properly differ in this, That Regraters are those who Buy up all Goods, in order to Sell them again at a dearer rate; And Forestalling is the Buying of Goods before they come to an Open Mercat, or the Buying in a Mercat before it be Proclaimed. Not as if all Buying of Things going to a Mercat were Forestalling: For that may be done sometimes Ignorantly by one who knew not of the Mercat, and sometimes Necessarily, when a Person Buys for his own Use. But those are only Punishable as Forestallers, against whom, something of Design against the Publick Good can be made out. This Crime, whereof the Cognition is now Thirled to the Justices, was Antiently Judged only in the Chamberlane Air. (c) Maltmen are Discharged to have a Deacon, *Act 29. Parl. 1. Ja. 6. Act 15. Parl. 2. Ch. 2.* Lest, at their Meetings, they might Conspire to Force Gentlemen to Sell their Vistual at any Rate, by Arbitrarily Setting a Price upon it, and upon the Ale and Beer. But the Lords of Privy Council are Impowered to Proportion the Weight of Bread with the Boll of Wheat, and the Price of the Ale with that of the Bear, *Act 15. Sess. 1. Parl. 2. Ch. 2.*

Horn, Vagabonds, Masterless or other suspected Persons, within fifteen Days; The Justice may Fine them in Fourty shillings for the first, four pound for the second, and ten Merks with the loss of Liberty of *Brewing* for the third Fault; without prejudice to any greater pains and penalties that the said Resettlers may be lyable in by Law. 12. They shall set down Orders concerning what is fit to be done in the time of *Plague*, and punish Contraveeners severely (a). 13. They shall at the Quarter Sessions in *February* and *August* determine the Quantity of Servants Fees, and may compel them by Imprisonment or other punishment to serve for these Fees, and oblige Masters to pay them. It is also injoyned them to regulate the prices of penny-bridals, Shearers Fees, and Tradesmens Work. 14. They are to notice that Prison houses be kept up, & not suffered to decay, and inform the Council what Shires want Prisons, & proceed according to their Direction in the building of a Prison within the Head-burgh (b). 15. They may Tax Parishes in a weekly proportion not under one shilling, nor exceeding five, for the Intertainment of poor Prisoners, to be uplifted by the respective Ministers or Readers, from Deacons appointed to collect the same, and to be delivered by the Constable of the paroch at the

(a) The Ordering what should be done in Time of Pestilence, was once the Business of the Clergy, as being a Work of Christian Charity, *Act 57. Parl. 13. Ja 2.* (b) By the *Act 273. Parl 15 Ja 6.* Sufficient Prisons were Ordained to be Built and Upholden in all Burghs by the Provost, Baillies and Council thereof, on their Common Good, or otherways on the Charges of the Burgh, because of the great Immunities and Privileges they enjoy: And Prisons are not understood sufficient, without Cat-Bands and Outward-Chains, which the Prisoner cannot Force from within.

Quarter Sessions to the Justices Order. 16 Magistrates and Keepers of Prisons are obliged to receive and answer for Prisoners brought to them by the Constables, or Warrants subscribed by the Justices: they satisfying for their Intertainment (a). 17. The Justices should cause sufficient single and double Ale to be Brewed in every Shire, and appoint Visiter with consent of the Master of the Ground for that effect (b). And should make Acts against common and notorious Drunkards and punish the Contraveeners (c). 18.

(a) The *Act 6. Sess. 8. and 9 Parl. K. W.* Against Wrongous Imprisonment, doth not hinder Inferior Magistrates, or Justices of Peace, to take Security for the Good Behaviour, and Keeping of the Peace, as formerly; Or to Imprison, in Order to Tryal, for Indignities done to themselves, or Disobedience to Church Censures, or Riots or Tumults; or Drunkenness, Sabbath-Breaking, Swearing, uncleanness, Pickeries and Thieving, or to Imprison Vagabonds as formerly: The Persons Imprisoned having Relief by Offering Bail, and Demanding a Tryal as in the Act. (b) The *Act 43. Sess. 6. Parl. K. W.* Discharges the making Use of Salt in Brewing Ale or Beer any manner of way, under Pain of Confiscation of the Brewing Looms, and Liquor therein, to the Informer, who Employed as a Servant, and Accessory thereto: Besides the Loss of the Transgressors Freedom if a Burgess, and Incapacity to Brew thereafter, whether Burgess or not. And the Contravention of this Act is probable by Oath of Party, or *prout de Jure*. (c) The Justices of Peace, by their Instructions, and the *Act 19. Sess. 1. Parl. 1. Ch. 2.* would seem to be the only Judges for Punishing Drunkenness. But yet the *Act 20. Parl. 22. Ja. 6.* appears to give the Kirk-Session a Cumulative Jurisdiction in the Matter. And the *Act 22. Sess. 3. Parl. 2. Ch. 2.* Authorizes the Minister and Kirk-Session in Landward Parishes, with such of the Heretors as should meet upon eight days Warning from the Pulpit, to Name a Collector for Uplifting the Fines Imposed for Prophaneness by the Justice of Peace, or other Judge ordinary: And where no such Person of Authority Resides in the Parish, to Name a fit Man dwelling there, for Executing the Laws against Prophaneness; Whom the Judge ordinary of the Bounds is to Invest for that Effect with the Powers of Deputation. And the Minister, Kirk-Session, and Heretors of each Parish, convened in manner foresaid, are Allowed to Apply the said Fines as the Act prescribes. And this Act was Ratified by the 25. *Act 2. Sess. Parl. W. and M.*

Three Justices are a *Quorum* to judge in the Interval betwixt Sessions. 19. Justices of Peace are not chargeable as such, upon Letters of Caption for apprehending of Rebels. 20. A Commission being granted to some persons for reducing all Weights and Measures to the *Linlithgow* Standart, the Justices of Peace are to see that the said common Measure be universally used, and that there be a conformity in weight & measure, betwixt Burgh and Countrey; for which end the Landwart Justices may require a Note from the Magistrats and Dean of Gild of every Town, of their Weights and Measures, and inform the privy Council of what is wrong. And no other Measures than these given up in the said Note are to be allowed within the Burgh till licensed, and the said Justices be acquainted therewith (a). The Justices are also to order the Constables to apprehend

(a) The Acts for Reducing Weights and Measures to the *Linlithgow* Firiot, were never Extended to Miln-Measures; And did not prejudice any Persons Right to a different Measure by Intestment, Tack or Contract: But only obliged to proportion the same to *Linlithgow* Standart, *Mackenzie Observ. on the Act 114, Parl. 11. Ja. 6.* But Meal was Ordained to be sold by Weight, at the Rate of eight Stone Trois, in place of the *Linlithgow* Boll, under the pain of Escheat of the Meal to the Informer, and eight days Imprisonment of the Seller, to be Executed by the Judge competent, under the pain of double the Value to the Informer, *W. and M. Parl. 1. Sess. 6. Cap. 6.* And now, since the Union, by the seventeenth Article thereof, the *English* Weights and Measures are to be used here: And Standarts thereof, conform to those kept in the Exchequer at *Westminster*, are to be sent down to be kept by those Burghs, to whom the keeping of the Standarts of our present Weights and Measures doth belong, *viz. Edinburgh*, where the Standart of our Eln is kept, *Lanerk*, where our Stone Weight is kept, *Linlithgow*, where the Firiot is, and *Stirling*, where the *Scots* Pint or Jugg is kept. And the Justices are to see, that these new Standarts be the Rule of Measure and Weight every where. But this seems to be without prejudice to the Acknowledgment paid to the Town of *Wigtown*, and some other particular Burghs, by Immemorial Possession, for Measuring Juggs, and giving a free Stallage to those within their Territory.

Despisers of Church censure. 21. They must appoint a sufficient Collector for uplifting the Fines and penalties they shall impose upon Offenders, and cause them find Caution. And the Lords of Session are to direct general Letters at the said Collectors instance for these Fines, on a fifteen Days charge (*a*), and not to suspend but upon Consignation of the Fine, and Caution for payment of charges at the Lords Modification (*b*). 22. Justices under the Degree of a Lord of Session are allowed Fourty shillings *per diem* for their attendance at the Sessions (not exceeding three days at one time) to be payed by their Collector. And these who have this allowance are lyable in the penalty of Fourty pound for absence not excused from every ordinary Quarter Sessions, or from other Meetings when lawfully required to assist thereat by the *custos rotulorum* (*c*). 23. The Justice should after every Quarter Session send in to the Clerk of Council a List of the persons committed, or put under surety by them with an Abbreviat of the cause thereof, (*d*) to the end the Council may direct betwixt and the next Sessions what shall be done with them.

(*a*) But now General Letters of Horning are Discharged, except for the Queens Revenue, & Ministers Scipends on Decreets for Localitv, & General Letters on Decreets for Poinding the Ground, *Act* 13. *Sess.* 2. *Parl. W. and M.* (*b*) Sir G. Mackenzie (*Observ. on the 2. Act. Parl.* 22. *Ja.* 6.) says, That Consignation is not in *Viridi Observantia*. But yet, by the 31. *Act. Sess.* 6. *K. W.* Advocations of Penal Actions for Prophaneness, or Suspension of Sentences thereon, are not Allowed without Consignation or Discharges. (*c*) According to the Rule of Law, *Quem sequitur commodum, eum sequi debet incommodum*. By the Law of England, Judges and Sergeants at Law are not bound to Attend the Sessions, but when they can do it conveniently, *Stat. Canterbr. Cap.* 10. 12. *R.* 2. (*d*) This, in the Civil Law, is called *Transmittere cum Elogio*.

CONSTABLES.

3. As to the Constables, the Act 1617, contains the following Instructions, 1. Two or more Constables are to be appointed from six Months to six Months in every paroch or Great Town, not being a free Burgh, by the Justices of peace in their Quarter Sessions, and in Burghs-Royal by the Magistrats. And the constable refusing to swear *de fide* may be imprisoned and fined by the Justices. 2. All Constables, or at least one from each paroch, in Name of the rest, should attend the Quarter Sessions, inform concerning breaches of the peace, and the Evidences thereof, and receive the Justices Directions. 3. Constables may apprehend suspected persons, Night Walkers who cannot give a good account of themselves, Vagabonds, sturdy Beggars, Egyptians, idle poor persons, and Yeomen wearing Hagbuts, Pistols and Daggers; and carry them to the next Justice of peace (a); They may also seize persons for Slaughter, Murder, Theft or any other capital Crime; and require the Assistance of Neighbours for the safe conveying of them to the Justice of peace, which Neighbours refusing to concur may be punished by the Justices at their Sessions. 4. They ought to Rid Frays, and seek the Neighbours to assist for separating the parties; and such as hurt them may be punished by the Justices. 5. A Constable may follow one that hath made a Fray, into any House, and require open Doors to

(a) We distinguish not here with the Common Law between Offensive and Defensive Arms.

be made, and upon being denied Liberty to enter, may take Witnesses. Yea he may even follow and apprehend the Delinquent in a fresh pursuit without his bounds, and crave the Countreys Concurrence (a). 6. A Constable may upon a Complaint apprehend a Yeman threatner, and carry him with the Complainer before a Justice of Peace, and may Imprison him if he refuse to go. 7. Constables and Clerks of the Peace are to be paid for their Labours out of the Fines, and if these fall short, the Lords of Exchequer shall see to the payment.

These powers granted to Justices of Peace and Constables, are declared to be without prejudice to any persons Right or Privilege of Jurisdiction. For salving whereof the Justices are discharged to cite any Delinquent before their Courts, till after expiring of 15 days from the Commission of the Crime: Which Interval is allowed to the Judge competent to exerce his power and Jurisdiction (b).

4. The forsaide Act 1617, was Ratified and Confirmed by the 25 Act of King *Char. 1. Par. 1633.* with the addition of a Parliamentary power to the Lords of Privy Council, for enlarging the Authority of Justices of Peace, and imposing Penalties on such of them as keep not their Meetings (b).

(a) This is called *the Hue and Cry*. (b) This is a mighty Limitation upon the Justices's Power. But they were put under no such Restraint by *Cromwell's* Instructions. (c) Sir *G. Mackenzie* observes, That it is being only in effect a Commission, it may be said to Expire with the King and Parliament who gave it; And that being granted to the Privy Council indefinitely, without adding for the time being, it could last no longer than that Commission of Council. However the Council have still been in Use hitherto, to give Instructions to the Justices of Peace by virtue of this Act.

5. The said Instructions given to the Justices of peace and Constables, were renewed in the Act 38. *Parl. 1. Sess. 1. Ch. 2. anno 1661.* with these additional Articles, *viz.* That the Justices of peace be Nominated by the Sovereign, and at their first Meeting take the Oaths of Allegiance and *de fideli administratione*. And that they meet in their respective Shires four times in the year. *viz.* the first *Tuesdays* of *March* (a), *May* and *August*, and the last *Tuesday* of *October*. In which Quarter Sessions, they may administrat Justice in matters belonging to their Jurisdiction, punish Faults and Crimes committed in the preceeding Quarter, determine Servants Fees, and Tradesmens prices, elect or continue Constables or other Officers, and dispose of the Fines for their payment: and apply what's over to other Uses; and may continue or adjourn their Sessions. 2. They are to execute the Acts against Cursers and Swearers, or Mockers of piety (b), by exacting the Fines in

(a) *March* seems to be put here, by Mistake, for *February*. Because, not only in the Instructions to the Justices of Peace in the Years 1610, and 1655, (out of which this Act is mostly drawn) the first *Tuesday* of *February* is made one of the Quarter Sessions; But also *infra* in the same Act, Servants Fees and Workmens Prices are Ordained to be Determined at the Quarter Sessions in *August* and *February*. And besides, the Interval between the first *Tuesday* of *February* and the first *Tuesday* of *May*, makes a just Quarter of a Year, whereas two Months only intervene betwixt these days in *March* and *May*. (b) All Judges, Magistrats, and Justices of Peace, are Ordained to Execute the Laws against Persons delated to them by the Kirk Sessions, or other Church Judicatories, as guilty of Prophaneness, *Act 22. Sess. 3. Parl. 2. Ch. 2.* And they are enjoined to put these Laws in Execution at all times, without Necessity of a Dispensation, against all Delinquents, under the pain, (in case of Failure upon Requisition by the Minister, Kirk Session, or their Procurator) of 100 Pound *tuties quoties* to the Poor of the Parish. Unless they can instruct, That, within ten days of the Instrument taken against them, they used all Diligence to put the Laws in Execution. For which 100 Pound they may be pursued summarily before the Lords of Session at the Instance of the foresaids Persons, or the Church Agent, *W. Parl. 1. Sess. 5. Cap. 13.* the

the Act 19 Par. 1. Sess. 1. Ch. 2. and punishing the insolvent in their persons. And to punish delinquent Wives according to their Husbands Quality, and to make their Husbands pay for them (a). They are to execute the Laws against Fornication (b), by exacting for the first Fault from each Nobleman or Woman 400 lib: each Baron or Baroness 200 lib. each other Gentleman or Woman and Burgesses 100 lib. and from these of Inferior Quality 10 lib. and doubling the penalties according to Relapses, and Degrees of the Offence, and Quality of the Offenders; and making both the Man and Woman pay according to their Quality (c). 4. They are to execute the Laws against Drunkenness or haunting of Taverns or Alehouses after Ten a Clock at Night, and against the Keepers of such Houses who sell them Drink; and the Acts against prophaners of the Lords-Day. 5. The one half of the penalties is to be applyed to pious Uses in the paroch where the Offence was committed, and the other half to be divided betwixt the Informer and Prosecuter, and

(a) But in the case of Conventicling, the Wives Fine was but the half of her Husbands, Ch. 2. Parl. 2. Sess. 2. Cap. 5. And as the said fifth Act was justly swept away by the Rescissory Statute in K. W. and Q. M. Reign: So it seems hard in the general, to punish a Husband for his Wives Transgression; For, *quis cuique Socio Dolus obesse debet. Delicta suos tenent Authores.* And *Pena ex Delicto pendenda Societati non est imputanda*, l. 52. §. ult. ff. pro Socio. And the Nation was so sensible of the Hardship of Fining Husbands for their Wives Contravention of Penal Statutes, That it is posited in the Claim of Right as an Article contrary to it. Again, were it not strange to make a Man pay for his Wives Unlawful Swearing, who cannot be prejudged by her Oath taken in a Lawful Way for a Civil Debt. (b) The Justices of Peace must Execute the Laws against Fornication and Prophaneness, without prejudice to the Exercise of Church Discipline, Act 22. Sess. 3. Parl. 2. Ch. 2. (c) Because they concur in the Transgression: & *mutua Culpa, mutua Pena.*

the Constable, and other Uses at the sight of the Justices. 6. The Justices shall cause apprehend heinous Criminals, and commit or bail them as the Cause allowes, take the Accusers Information upon Oath, and bind him to prosecute, take the Deposition of the Witnesses, and bind them to give Evidence, and take the Examination of the accused, and signifie all to the next Quarter Sessions or Criminal Court *respective*, that Justice may proceed against the Criminals (a). 7. If any Nobleman, Baron or Baillie claim Right to judge a capital Offender apprehended by a Constable, the Justice of Peace shall take surety from him to Minister Justice duly, and shall Report the matter to the Bench at the next sessions, that they may enquire if Justice was accordingly done, and if not, may acquaint the Privy Council. 8. The Justices must twice in the Year, the first of *December* and the first of *June*, take up a List of the impotent poor in every Paroch, and appoint two or more Overseers, who ought to provide a House for them, and take up the Collections of the paroch and other sums destined for the Poors Use, and dispose of it proportionably for their Maintenance. These Overseers are to inquire into the Behaviour of the Inrolled poor; Of whom if any go Abroad to beg, or refuse to work as they are able, or be guilty of other Miscarriages; the Overseers are to acquaint the Justices to punish them for the first Fault as they think fit; and for continuing in these Miscarriages to proceed against them as Vagabonds. The Justices are to

(a) This sort of Precognition by the Justices, was never in Observance with us.

take account of these Overseers Administration upon Oath, every six Months or oftner as they see Cause. And if any who is named an Overseer refuse to accept, or having accepted be found negligent, or decline to account for his Intrusions when required; the Offender in either of these cases shall be Fined in 20 pound for the use of the poor, and further censured at the Quarter Sessions, as the Justices shall think fit. 9. The Justices are authorized to call those who exercised the Office under the Usurper, to an accompt for all Fines imposed by them, and to exact from them what had not warrantably been disposed of. 10. Constables are to arrest all wearers of Guns; not being in the Kings service, or duly Licensed, and to carry them to the next Justice.

6. The Instructions given by *Cromwells* Council in *Scotland* to the Justices of Peace and Constables anno 1655, run much in the strain of the Acts of Parliament 1617 and 1661, but vary in that by the Protectors Instructions, 1. The Oath *de fidei* contains an express Clause that the Justices should take nothing for their Office but what was or should be allowed by Law. 2. The *Custos Rotulorum* was allowed to Name the place where the Justices of Peace should hold their Quarter Sessions; if they or their *Quorum* failied to do it. 3. The powers of the Justices were not subject to any *super sedere* of Exercise for any days after Commission of the Crime. 4. They might compell any Man to come before them, and proceed against all Committers of Riots and breakers of the Peace without Exception. 5. Any two or more of them were a sufficient *Quorum* to decide in matters occurring betwixt the Quarter Sessions. 6. Where the Collections of a Paroch or other sums destined for

for maintaining the Poor thereof, were found deficient, and less than would answer that end; the Justices to supply the same might tax or stint the Parochioners proportionably, with a competent weekly or monthly Contribution. 7. The reasonable satisfaction to be allowed to the Constables out of the Fines for their pains while they attended the Sessions, or were imployed in carrying Delinquents to prison, was not to exceed 12 pence *per diem*.

7. The Acts 16 17, 1633, and 1661 were Ratified and confirmed by the 16 Act of King James 7's first Parliament, with power to the Justices of Peace to proceed against Church irregularities and non-conformity, and to chuse their own Clerk, and Authorizing the Privy Council, upon the death of any of the Justices of Peace, to name others in their place; but prejudice always to the Jurisdiction of Sheriffs, Stewarts, and Baillies of Bailliarie, Regality and Baronie. But the Justices of peace were deprived of the power of naming their own Clerk (as being the privilege of the Secretaries of State) by the 20 Act of the 2d Sess. of that same Parliament. And the foresaid Act 16 was *funditus* Rescinded by the Act 28. Sess. 2. par. W. & M. (a)

(a) And yet the Council hath hitherto been in Use to Name Justices of Peace, in place of such as died. But I dare not say, That they will now continue in the Exercise of that Privilege; Since, by the Nineteenth Article of the Union, the Sovereign is Allowed to Continue a Privy Council in Scotland, for the Publick Peace and Order, only during the British Parliaments Pleasure. And the late Commission and Proclamation Naming Justices of Peace among us, is Declared Effectual during Her Majesties Pleasure alicenary, who may Alter, or Add to the Number therein, by a Letter or Warrant under Her Royal Hand.

7. The care of the Highways committed to the Justices of Peace by former Acts of Parliament, having mostly proven ineffectual, for want of special Orders to them for that effect: The Act 16. *Par. 2. Sess. 1. Ch. 2.* doth appoint the sheriff of each Shire, with one of his Deputs, being an Heretor therein, and the Justices of Peace to convene at the Head-burgh thereof, upon the first *Tuesday* of *May* yearly, with power to them, or the Majority of them to divide among themselves the oversight of the High-ways within the Shire; and power to every one to cause Tenents within the bounds of their part, bring Horses, Carts, Slades, and Instruments necessary for repairing the High-ways betwixt the Bear-see'd and Hay-time or Harvest; and to appoint them Wages for their service and attendance; so be, their Work-days for Man and Horse do not exceed the Number of six yearly for the first three Years, and four days yearly thereafter. And to poind for each Mans absence from the Work, to the value of 20 shillings, and for the Absence of Man and Horse, to the value of 30 shillings; and Apprise the same upon the ground of the Land, and therewith to hire others; and to punish the Absents personally if they have not poindable Goods. Three of the Justices, by Order from the rest, may change inconvenient High-ways, and estimate upon Oath the damage of Parties prejudged thereby; who are to receive the same in Writ from them, in order to get satisfaction from the Shire. Again, the Justices are ordered to meet at the Head-burgh of the Shire for the three subsequent years, the first *Tuesday* of *June* yearly, and thencefurth every *Tuesday* from *Fortnight* to *Fortnight*

night during the Months of *June* and *July*, at such places as they shall appoint, for taking account of the several Justices and Overseers of the respective proportions of High-ways committed to them; and to fine such as have been negligent, and to poind therefore upon the ground of the Lands where their Goods shall be found. The Justices are also to oversee the Ferries in their Shire, and where any ly betwixt two Shires, the Justices of both Shires must concur to appoint sufficient Boats, and convenient Landing places; and to see that the Liedges be readily and well served at reasonable Rates; and to punish Transgressors of the Rules set down by them for that effect. And the Heretors in Burgh and Landwart in each Shire, are required to meet at the Head-Burgh the said first *Tuesday* of *June* yearly, and to stent themselves, if needful, not exceeding 10 Shillings on the 100 pound of valued Rent, for the uses foresaid of repairing of the High-ways, and making and repairing Bridges or Ferries; to be uplifted by the said Justices or their Order, by poinding as said is: for the employing whereof to these Uses, they shall be accountable to the Heretors yearly at the next *Michaelmas* Head-court. And the Breakers or Abusers of the High-ways by plowing, laying Stones, Dung or Rubbish thereon, pooling or damming Water thereon, or otherways; being convict thereof by Oath or Witnesses, are finable by the Justices: and the Fines to be applyed for the use of the High-ways: And any damage of that kind to the High-ways is to be reputed done by the Labourers of the next adjacent Land, who shall be fined therefore; refer-

ving to them to pursue the real Actors for Relief before the Justices. The Justices are also Authorized to see to the right Application of all Destinations or Mortifications to Bridges, Causeys, Ferries or High-ways. And their Convener ordained to give an account the third *Tuesday* of *July* yearly to the Privy Council of their Progress in repairing High-ways, Ferries or Bridges: who are impowered to grant Horning and Poinding, and to order the Levying of moderate Customs^(a) at Bridges, Causeys or Ferries, for the foresaid Effects in case the Stent fall short; and are impowered in case the Justices and Heretors neglect the care of the High-ways, Bridges and Ferries, to take the Charge upon themselves, by appointing Overseers, and to punish the others. The Justices may also poind the Labourers of Land lying upon High-way-sides unfenced by Dyke, Ditch or Hedge, to the value of Four shilling *Scots* for each Eln that is not fenced after the first of *August* 1671; and the Fine to be applyed for the fencing thereof.

8. The Interval betwixt Seed-time and Harvest being found too short for repairing High-ways, Bridges and Ferries, it was appointed by the 9 Act of the 2d *Seff.* of that same 2d *Parliament* of K. Ch. 2d. that the respective Sheriffs and Justices to whom the Execution of the foresaid Act 16 was committed, may call the Country, to work

(a) The ordinarily Customs can only be Impos'd by the Sovereign Authority of Parliament, l. 10. ff. de Public. & Vectig. l. 3. Cod. de Vectigal. Nov. Institut non posse junc. Act 57. Parl. 1. *Seff.* 1. Ch. 2. Yet we have Exceptions of this Nature, even in the Civil Law, l. 10. C. de Vectigal.

and mend the Ways, Bridges and Ferries at any time, Seed-time and Harvest excepted; and may take Money for dispensing with those who are lyable to work thereat, but by reason of their distance cannot attend, *viz.* six shillings yearly for each Man, and 12 shillings for each Horse, to be expended on Workmen in their place.

9. The said Act 16 *Seff.* 1. and Act 9. *Seff.* 2. *Ch:* 2. were Ratified by the Act 8. *Seff.* 2. *Par.* *Ja.* 7. wherein the Commissioners of Supply are joined to the Justices of Peace in the Charge of High-ways and Bridges, and Five made a *Quorum*; excepting the Shires of *Clackmannan*, *Kinross* and *Cromarty*, where three is declared a sufficient Number to Act. The Sheriff or his Deputs appointed to intimate the first *Dyet* of their Meeting yearly at each Parish Church upon the preceeding *Sunday*, under the pain of 500 Merks *Scots*. And the Penalty of each days absence from the Meeting 20 Merks; to be applyed for Repairing High-ways and Bridges. The Inhabitants are appointed to work at the Reparation of the High-ways six days yearly, for the space of five years, from the last *Tuesday* of *June* 1686. The Expence of Repairing Bridges and Ferries that are upon the confines of two Shires, must ly upon both proportionably to their respective Valuations. And if Shires or Burghs do not repair and uphold the Bridges within their several Bounds, but suffer them to fall, they are to be fined in as much as will Repair or Rebuild them.

10. A late Commission and Proclamation of Her Majesties Privy Council here, issued out in this present year 1707, hath Named a new set of Justices

Justices of Peace among us, Declaring all Noblemen^(a), Privy-counsellors, and Lords of Session, to be Justices every where within *Scotland*. And giving the same powers to these Justices of Peace that is competent by the Laws of *Scotland*, particularly the above-mentioned 38 *Act Parl.* 1661. And farther Impowering them to do in Matters relating to the Customs and Excise, what belongs to the Office by Laws made in *England* before the Union. But in all Matters of the said Excise, the Justices of Peace for the Shire of *Midlothian*, and the Magistrates of *Edinburgh* for the time being (who are appointed Justices of Peace for the Good-town) are to meet and judge as formerly. And for every other Royal Burgh the Eldest Magistrate for the time Residing, and not a Brewer there ^(b). Which Justices are ordained to take the Oaths of Allegiance and *de fideli*, and to subscribe the former with the Assurance. And the said Commission is only to be effectual during Her Majesties Pleasure: who may from time to time alter or add to the

(a) I don't find, that ever all the *English* Peers had, by Commission, such a Privilege as this, of being Transcendent Justices of the Peace thro' all *England*. Tho a Learned Writer (*Smith de Repub. Angl. Lib.* 2. *Cap.* 22.) Insinuates, That sometimes some of the chief Nobility get Commissions of that Extensive Nature, as a particular Mark of the Royal Favour. And the *Stat.* 2. *H.* 5. *Cap.* 4. which obliges Justices of the Peace to Reside within their respective Shires, doth Except Lords, Judges, Sergeants at Law, and the Kings Attorney. (b) Several Royal Burghs in *Scotland* are Heretable Justices of Peace within their own Bounds, as *Edinburgh*, *Aberdeen*, &c. These Mr. *Lambard* (*Eirenarcha, Lib.* 1. *Cap.* 5.) calls Justices of Peace by Letters Patent, to distinguish them from simple Commissioners of the Peace. And that Author will have Grants of the former Kind not to be Revocable at Pleasure, as the latter are. Yet Mr. *Dalton* (*Country Justice, Chap.* 6. §. 7.) Allows not Justices of Peace to Exerce their Authority in any City, that hath the Right of Justiceship within their County.

Number of Justices therein named, by a Letter or Warrant under Her Royal Hand.

11. In pursuance of good Method, I proceed to treat of Customs and Excise: In order to clear up the foresaid *English* Powers now communicated to our Justices of Peace in consequence of the Union.

CHAP. II.

Concerning the Customs.

1. **C**USTOM, or that Duty which is paid to the publick for Merchandise imported or exported, was mostly the Eighth part of the Goods among the *Romans*; whence the Collectors were termed *Octavarii*. But we pay so much Money: And I refer such as desire to know particularly for what things, and how much Custom is due to the *English* Book of Rates (*a*), compared with the 6. 8, 10, 11, 12, 13, 14, 18, Articles of the Union. Whereby the Customs and Duties on Import and Export in *England*, at the commencement of the Union, are thereafter to take place here: Excepting the Duties upon such particular Commodities as persons are exempted from by privat Rights. But we are not for 7 years to pay for Salt made in *Scotland*, the duty payable for Salt made in *England*; and after the said 7 Years we are exempted from the Duty of

(*a*) Our Book of Rates is called an *A, B, C* of the Customs, *Act 251. Parl. 15. Ja. 6. i. c.* a particular *Index* of the several Customs Imposed on every Commodity, according to the Letters of the Alphabet.

2 *sh.* and 4 *d.* a Bushel imposed on Home-salt by an *English* Stat. in the 9 and 10. K. W. 3. yet are then to bear a proportion of any other Fund that the Parliament of *Great-Britain* shall at or before expiring of the *septennium* substitute in place of the said 2 *sh.* and 4 *d.* and have an Equivalent in the terms of the Treaty. But during the 7 years, the same Duties are payable for all *Scots* Salt imported to *England*, as for Salt made there: And thereafter the Duty of 2 *sh.* and 4 *d.* is payable for the said Imported *Scots* salt, as well as for *English* salt, to be Levied and Secured in the same manner as the Duties on Foreign salt. Fleashes exported from *Scotland*, and our Ship-provisions, may be salted with *Scots* salt, paying the same Duty as it pays in *England*. But we are not to be charged with the present *English* Duties on stamped Paper, Vellum and Parchment, Malt, Windows and Lights: and we are only chargeable with Duties upon Coal, Culm and Cynders not consumed in *Scotland*.

2. Custom is not to be exacted but for lawful Goods: such as are unlawful being confiscable with the Ship they are in (if put Aboard with the Knowledge of the Master of the Ship) and other lawful Goods belonging to the same owner (*a*). But no Ship or Goods shall be seized as forfeited for unlawful Importation or Exportation, or Non-payment of any Customs or Subsidies but by the Officers of the Customs, or warrant from the Lord Treasurer, or Under-treasurer, or by special Commission under the Great or Privy Seal (*b*).

(*a*) l. 11. §. 2. ff. de Publican. & Veltigal. Voet. Comment. in Pandect. Lib. 39. Tit. 4. N. 31. (*b*) Stat. 13 & 14. Car. 2. Cap. 11

2. Goods Imported paying Inward Custom, are to be free of Outward Custom if again Exported (a). Who minds to export again imported Goods, for which the Duty was payed, must obtain a certificat from the Customers, expressing the Nature, Colour, Length, Value, Content or Weight thereof; to be shewed to the Customers of the Port where they are to be conveyed, before discharging, in pain of forfeiture of the Goods to be divided betwixt the King and the Prosecuter (b). The Exporter of some Imported Liquors to receive back no part of the Duty, nor be discharged of the security granted for the same (c). The Exporter of some Goods Imported within six Months after Importation, to be Repaid, two third of the Duties paid (d). For Exporting of Imported Goods, Brandy excepted, within a Twelve Month by any *English* Merchant, or within nine Months by Strangers, the Duty shall be repaid, or the Security vacated (e). For the like Export of Goods, two thirds of the Duty to be Repaid, upon the Exporters Oath that they are effectually to be Transported beyond Sea, and not to be Re-landed in *England* (f). 3. Again, by several Acts of Parliament, Draw-backs are allowed for encouraging the Export of some kinds of Goods, whereof the Inland consumpt is not so profitable to the Country, and Præmiums for the Import of others more profitable. And (g) In all Cases where the Oath of Importer or Exporter is Required to obtain a Draw-back or Allowance for

(a) Act 57. Par. 1. Sess. 1. Ch. 2. (b) 3. H. 7. 7. (c) 1. J. 2. cap. 3. (d) 1. W. & M. Sess. 2. Cap. 6. (e) 4. & 5. W. & M. Cap. 5. (f) 6. & 7. W. 3. cap. 7. (g) Stat. 2. A. cap. 9.
Foreign

Forreign Goods, the Oath of the Agent of any Company trading by a Joynt-stock, and the Oath of a Merchants known Servant imployed in making his Entries and paying his Custom is sufficient. By the 6. Article of the Union, the Allowances, Encouragements and Draw-backs for Regulation of Trade, established in *England* at the Commencement of the Union are thereafter to take effect in *Scotland*, with this addition; that when Oats are sold at 15 *shillings Sterling* or under per Quarter, there shall be paid 2 *shillings sterling* for every Quarter of Oat Meal exported in the Terms of Law; and that our Bear exported shall have the same Reward as Barley; and that the Prohibition as now in force by our Law against the Importation of *Irish* or other Foreign Victual do continue till a more effectual way be provided by the *British* Parliament, for discouraging the Importation of Foreign Victual. And by the 8. Article of the said Union, there is allowed 10 *sh.* and 5 *d. sterling* for every Barrel of White-herrings, 5 *sh.* for every Barrel of Beef or Pork salted with Foreign, without mixture of *British* or *Irish* salt, and exported for sale from *Scotland* to parts beyond sea. It being made appear before the Lord Treasurer, Commissioners of the Treasury, or chief Baron of the Exchequer, that a Denizon's Goods for which Custom was paid, had Perished or been taken at Sea; The Merchant may Ship in the same Port other Goods to the value of these lost in Custom, without paying any thing. So be, the proof is Recorded and allowed in Exchequer, and certified to the Collectors of the Customs (a).

3. Acts imposing Custom are to be strictly interpreted (*a*). Because, *Liberatio ab Oneribus est Favorabilis*, and *Onera Rebus imponi est Odiosum*. And *in Dubio contra Fiscum est Respondendum* (*b*).

4. Those who have the Oversight of all Her Majesties Customs are called Commissioners of the Customs ; under whom are employed a great Number of Officers, such as Collectors, Customers, Comptrollers, Surveyers, Registers, Waiters, &c.

5. By the Civil Law some persons were incapable to Farm the Customs ; as those who were in Arrears for former Tack-duties, or otherwise Debitor to the Fisk, Souldiers, Tutors and Curators *ante redditas rationes*. And by the *English* Law, no Customer, Comptroller, Searcher, Surveyor, of Searchers or their Clerks, Deputies, Factors or Servants should have any Ship, of their own, use Merchandise, keep a Wharf, Inn or Tavern, or be a Factor, Attorney or Host to a Merchant ; in pain of 40 pound to be divided betwixt the King and the Prosecutor (*c*).

6. Officers of the Customs malversing by concealing and not giving up true Accompts of what they received, are under the check of Law. For an Officer of the Customs concealing any thing duly entered and paid, is to forfeit the triple value of the Merchandize, and to make Fine and Ransom to the King ; and the Prosecutor to have a third of the Penalty (*d*). Customers are to make a true Certificat of Goods Exported after Importing, in pain to Forfeit their

(*c*) *Voet. Comment. in Pandect. Lib. 39. Tit. 4. N. 18.* (*b*) *l. 10. ff. de Jure Fisci* (*c*) *20. Hen. 6. 5.* (*d*) *3. H. 6. 3.*

Offices, and make Fine at the Kings pleasure (a). Officers making false Certificats of Goods that should have been Landed, shall lose their Employment, be Incapable of any Trust about the Customs, Forfeit 50 pound, and suffer a Years Imprisonment, and be lyable to what Corporal Punishment the Court of Exchequer shall inflict (b). 7. For that the Collectors of Customs have sometimes abused their Authority, in oppressing Merchants by Unlawful Exactions and Extortion: *Quanta enim Audacia, Quanta Temeritatis sint Publicanorum Factiones, Nemo est qui nescit* (c). Therefore Law hath been careful to bind them to good Behaviour: And to provide against their spunging and oppressing People. To this purpose there are several Edicts in the Civil Law (d): By our Law, the Exacting from People other Customs than what are warranted by Law, or Immemorial Possession, is punishable as Oppression (e). And it is Oppression to take any thing for the Discharge of Publick Dues (f). Customers or Searchers conniving at the Export of forbidden Goods are, by the Act 89, Parl. II. Ja. 6. to be Tryed Criminally, and their Moveables to be Escheated. Tho the Exchequer and Council us'd to inflict Arbitrary Punishments in such cases. And the Act 168 of that same King's thirteenth Parliament puni-

(a) 3 H. 7. 7. (b) 13. & 14. Car. 2. Cap. 11. (c) l. 12. *quin. ff. de Publican. & Vestigal.* (d) l. 1. pr. §. 2, l. 12. pr. §. 1. l. 9. §. 5. *ff. de Publican. & Vestigal.* (e) Act 54. Parl; II. Ja. 6. (f) Act 3. Sess. 4. Parl. W. and M. Oppression is ordinarily but a Quality of other Crimes; But yet sometimes special separate Dittays are founded thereon. And some particular Statutes declare the several kinds of it to be punishable as Reif, or other specifick Crimes therein-mentioned.

thes Malverſing Customers and Searchers, who ſuffer forbidden or Uncuſtomed Goods to be Exported, only by Deprivation and Eſcheat of their Moveables. 8. Nor hath the *Engliſh* Law been leſs careful to prevent ſuch Abuſes. Any Customer or Comptroller taking Fee from Merchants for entering of their Goods, is to Forfeit ten pound to the King, and five pound to the Merchant *toties quoties* (a). A Collector or Comptroller taking any thing for the Sealing of Goods, to Forfeit twenty pound *toties quoties*. And for Delaying the Merchant in Sealing thereof, to pay fourty ſhillings, to be divided betwixt the King and the Merchant (b). If any imployed about the Customs take a Bribe (c), or connive at any falſe Entry, they ſhall Forfeit 100 Pound, and be incapable of any Imployment under the King. And the Giver of the Bribe ſhall Forfeit 50 Pound. But ſuch Offenders, who ſhall Reveal their Fault within two Months to the Treafurer, chancellor, Under-Treafurer, or Barons of the Exchequer, ſhall be Diſcharged. And if any imployed in the Customs demand or take greater Sums than are due by Law; Or put any Merchant or other out of his Turn, without Order or Approbation of the Managers, or ſuperior Officers of the Customs, or illegally detain Goods, or neglect to make Re-payments and Allowances, or after notice do not give out or execute his Warrant, he ſhall be liable to double Coſts and Damages (d). All Officers

(a) 11. H. 6. 15. (b) 4. H. 8. 6. (c) They are puniſhable not only for their own taking of Money, or good Deeds to betray their Truſt; But alſo for what is ſo taken, with their Privy, by their Wives or Servants, 1. 1. C. ad L. Julium. Repetundarum, & Arg. Act 23. Parl. 6. Ja. 6, For *qui facit per alium, facit per ſe*. (d) 13. & 14. Car. 2. Cap. 11.

of the Customs in the Out-ports, or elsewhere, shall, before the 25th of *March* next; take an Oath before two Justices of Peace, that they will not receive any other Reward or Gratuity than their respective Sallaries; or their Regular Fees established by Law (a). And for their Neglect or Refusal to take the said Oath, shall Forfeit their Office or Employment. The Persons Administring the said Oath, shall Certifie the same to the next General Quarter Sessions of the Peace of the proper County, to be Recorded there (b). No Fees or Gratuity shall be taken by any Officer of the Exchequer for any payment, Entry, &c. under pain of Forfeiting his Place, and Incapacity to bear Trust, and paying Triple the Value of what was taken. Yet Officers of the Customs duly imployed in the Execution of their Office on any Extraordinary Service at Times not Required by Law, may Receive such Recompence from the Merchant, &c. as the Commissioners of the Customs, &c. shall determine (c).

9. In *Holland*, because it hath often happened that Farmers of the Customs, what by Negligence in uplifting the same, what by gratifying Friends with a free Discharge of the Duty of their Goods turn Bankrupt and unable to pay their Tack-duty to the Fisk; they were altogether forbidden to dispense with the Custom of any Goods that are liable to pay Custom (d). And

(a) So by the Instructions to the Justices of Peace, *Anno* 1655 (Chap. 1. §. 6.) their Oath *de fideli* included a Clause, that they should take nothing for their Office, but what was allowable by Law. And the *Act* 104. *Parl.* 7. *Ja.* 5. Discharges Judges to take other Rewards or Bribes than are permitted by Law, i. e. the *Sportula* or Sentence Money. (b) 6. *W. & M.* Cap. 1. (c) 6. & 7. *W.* 3. Cap. 7. (d) *Voet. Comment. in Pandect. Lib.* 39. *Tit.* 4. *N.* 24.

by the *Act 34. Sess. 5. Parl. W. and M.* Farmers, Collectors, Surveyors, and other Inbringers of the Customs, are discharg'd to give any Abatement of the Duties imposed on the foreign Commodities therein mentioned; under the Pain of Deprivation, and losing the Benefit of their Tacks.

10. Exigencies of the Government require that the Officers of the Customs be protected. The *Dutch-law* is very severe to those who resist, insult or use Violence to them in the exercise of their Office (*a*). All persons that shall resist, abuse, beat or wound any Officers of the Customs, or their Deputies, in the Exercise of their Office; shall by the next Justice of Peace, or other Magistrat, be committed to Prison till the next Quarter Sessions, to be fined not exceeding 100 pound, and to remain in Prison till discharged by order of the Exchequer, or till they discover who set them on Work (*b*).

11. Seing Merchants use all ways and means to get off their Goods, Custom free, and to elude the publick. The not entering of Goods and paying Custom for them by the Civil Law infer'd forfeiture of the Goods only (*c*). But in *Holland* that punishment not being found sufficient to scare people from cheating the Customs, it was aggravated and distinguished with the Loss of Honour, a Temporary Prohibition to Trade, and Fining, or personal Punishment, in case of the Offenders Poverty. By our Law, those who paid no Custom, were once Ordained to be Bannished (*d*): But that went in Desuetude. By

(*a*) *Placit. Ordin. Holland. 17. June 1678 Vol. 3. Pag. 802, 803.*

(*b*) 13. & 14. *Car. 2. Cap. 11.* (*c*) *l. 14. ff. de Publican & Vellig.*

(*d*) *AB 101. Parl. 7. Ja. 1.*

the *Act* 15. *Parl.* 16. *Ja.* 6. the Exporting or In-bringing Goods lyable to Custom, without paying thereof, is punishable by Confiscation of the Owners whole Moveables, and not of the Unenter'd Goods only. Yet so far as I know, no Mans whole Moveables were ever Escheated for not paying Custom.

12. There is careful Provision made in the *English* Statutes, for securing the payment of Customs. Goods put into any Boat or Vessel to be carried beyond Sea, or brought from beyond Sea and Unshipped to be laid on Land, without payment of, or Agreement for the Duties, shall be Forfeited, one half to the King and the other to the Seizer or Prosecuter (a). Persons assisting in the Landing or Shipping off Goods Prohibited, or for which Duties are payable, without Warrant and Presence of some of the Officers of the Customs, being apprehended by Order of a Justice of Peace, and the Fact prov'd by the Oaths of two Witnesses; shall for the first Offence be committed to the next Gaol, till they find Surety for their good Behaviour; Or till they be discharg'd by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons of the Exchequer: And for the second Offence be committed for two Moneths without Bail, or till they pay the Sheriff five Pound, or be discharged by the Lord Treasurer, &c. If any Goods for which Custom is due be secretly conveyed on Board any Vessel, and be carried beyond sea, without falling under the Discovery of the Officers of the Customs, the Owners of the Goods, or these who Shipped them, shall Forfeit double their Value according to the Book of Rates; Except for

(a) 12. *Car.* 2. *Cap.* 4.

Coal, which, so secretly Exported, shall pay double Duty, as by the Act for Tunnage and Poundage. And any Vessel, upon which the Imposition of five shillings *per Tun* is payable; by the 12. *Car. 2. Cap. 18.* that shall put Goods or Passengers on shore, or into any Boat, without paying Custom and Tunnage, returning into *England* or *Ireland*, shall pay what was formerly due, and Forfeit ten pound. And Pilots, Watermen, &c. bringing Goods from on Board such a Vessel, shall pay the Duty of Tunnage, which the Vessel should have have paid, and Forfeit 40 Pound (a). All persons, who, by way of Insurance, shall undertake to deliver Goods Imported from beyond Sea, without paying the Duties thereof; or any prohibited Goods, and shall deliver or cause deliver the same accordingly, and all who shall agree to pay any Money for Insuring the Conveyance of the Goods Imported without paying the Duties, or any prohibited Goods, or shall receive such Goods, or others before the Duty is paid, shall Forfeit *toties quoties* 500 Pound, half to their Majesties and half to the Informer. And if the Insurer or Manager of the Fraud be the Discoverer, he shall not only keep the Insurance Money given him, and be free of any penalty, but shall have half of the penalties imposed on the parties who agreed for the Insurance, or received the Goods. But if the Party Insured make the Discovery, he shall recover back his *Proæmium*, get a Moyety of the Forfeiture Imposed on the Insurer, and be discharged of the Penalty to which himself is lyable (b).

(a) 13. and 14. *Car. 2. Cap. 11.* (b) 4. and 5. *W. and M. Cap. 15.*

13. By the *Roman Law*, those things hat were to pass Custom-free, behoved to be Entered (a): Lest, under the Cover of free Goods, those lyable to Custom might escape.

14. The Penalty of not Entering Goods lyable to pay Custom, is not incurred by one, who is driven by stress of Weather or Pirates, to Land his Goods at an unusual place (b).

15. If any Seizure be made for not payment of the Duty, the *Onus Probandi*, that the Duties were paid, must ly upon the Person who claims the Goods seiz'd (c).

16. Great Precaution is us'd for Obviating the Escape of Uncustomed Goods. And tho the *Act 57. Par. 1. sess. 1. Ch. 2.* discharges the taking Masters, Merchants, and Mariners Oaths in the Matter of Customs, yet the not payers of Customs and Excise, were afterward allowed to be pursued upon Oath, the Pursuers giving their Oath of Calumny, if required (d): But I don't find, where, by the Law of *England*, a Merchant can be put to his Oath, for alledg'd Abstracting or Concealing of Uncustomed Goods. Officers of the Customs may enter any Vessels, and even War ships, to search for prohibited Uncustomed Goods; The latter being lyable, as Merchant ships are, to all Searches and other Rules (Victualling Bills and Entering Excepted) under pain of 100 Pound. And no Entry of Goods, Inward or Outward, shall pass, without the Merchants, by themselves or their Agents, subscribe a Bill of En-

(a) *l. c. C. de Velligal. l. ult. c. 9. ff. de Publican. & Vellig.* (b) *l. ult. c. 2. ff. de Publican. & Vellig.* (c) *1. Ja. 2. Cap. 3. & 4. Stat. 2. W. & M. S. ff. 2. Cap. 5. Stat. 4. & 5. W. & M. Sess. 4. Cap. 15. & Arg. Decis. June 10. 1631. Peebles contra Scot.* (d) *Act 12. Sess. 1. Parl. 2 Ch. 2.*

try, with the Mark, Number and Contents, or Weight of the said Goods. And no Pacquet Boats shall, without Allowance from the Custom-Officers, Export or Import any Goods, under pain of 100 Pound to be paid by the Master, with the Loss of his Place, and Forfeiture of the Goods (a). If any Person cause Goods (for which Duty is payable, by virtue of 12. Car. 2. Cap. 4. concerning Tunnage and Poundage) to be Landed or Conveyed away, without Entry thereof, and the Customer, Collector, or his Deputy, first agreed with, upon Oath before the Lord Treasurer, any of the Barons of Exchequer, or chief Magistrat of the Place, where the Offence is committed, and Place next adjoyning, the Lord Treasurer, or Baron of Exchequer, or chief Magistrat of the Place, may, within a Month after the Offence committed, issue a Warrant to any Person or Persons, to enter in the Day Time, with the Assistance of a Sheriff, Justice of Peace, or constable, and in case of Resistance, to break open Houses. But if any House shall be search'd upon false Information, the Injured Party shall recover full Damages off the Informer in an Action of Trespass (b). And this Act to continue to the end of the first Session of the next Parliament (c).

17. Sir George Mackenzie(d) holds, That Customers may recover Unentered Goods, even from singular Successors who bought the same, for a competent Price. And (e) the Kings Impost was found a Debt affecting the price of Wine in the Buyers Hands, preferable to the Sellers Creditor,

(a) 13. & 14. Car. 2. Cap. 11. (b) This we call an Action for Damages. (c) 12. Car. 2. Cap. 19. continued 13. Car. 2. Cap. 7. (d) Observ. on the Act 15. Parl. 16. Ja. 6. (e) Dury, June 16. 1631. Peebles contra Scot. C 2 W.L.O.

who had Arrested the same. And the Sellers giving of Security for the Duty at the time of the Entry, was not found to hinder the Kings Officer to take himself either to that Security, or to the Merchant, or to the Goods extant unpaid for in the Buyers Hands.

18. Persons Counterfeiting or Razing any Custom-House Warrant, shall Forfeit 100 Pound, and the Vitiated Warrant shall be null (*a*).

(*a*) 13. & 14. Car. 2. Cap. 11.

C H A P. III.

Concerning the Excise.

1. **W**Hether the Word *Excise* be of Dutch Extract, as some think, or if it be *q. d. quid Excisum*, I don't know, nor is it much Material to know it : This however is certain, that the Duty upon Goods so called, is of no long standing with us ; For I can't fetch it higher than an Act of the Convention of Estates in *January* 1644, who for maintaining the Forces then on Foot, fell upon the expedient of raising Money by way of Excise on certain Liquors and Commodities, over and above the ordinary Customs and Duties.

2. An

2. An Excise upon the Inland Salt (*a*) and some Foreign Commodities, and an Excise of 3 shilling upon the Pint of Home Aquavitæ not made of Malt, and of two Merks upon the Boll of Malt was imposed by the Act 14. *Sess. 1. Parl. 1. Ch.*

2. as a Fund for raising that Kings Liferent Annuity of 40000 *lib. ster.* which Sum was proportioned upon the Shires and Burghs, and the In-lakes of their Excise appointed to be supplied by the Heretors by way of Cess. But several Shires and Burghs having Represented their Grievances (*b*), by the unequal proportioning thereof, to the same Parliament, at their third Session; It was Rectified by the 25 Act thereof. This Excise was prorogated for Five years after King Charles's Death (*c*).

3. But at length, that the Parliament might not be compelled at every turn to call upon the People for Contributions to support the Royal Dignity; The said Excise of Inland and Foreign Commodities was annexed to the Crown for ever (*d*).

4. The keeping up the Excise upon Malt being found inconvenient; for that it prompted the Brewers to make the Drink weak, by taking

(*a*) K. Charles 2. in pursuance of a Design to Improve Scots Salt, that Money might not go out of the Country for Foreign Salt, bought up the same and Ordained it to be sold out at reasonable Rates, which was called the *Pre-emption of Salt*. But the Officers and Servants having taken Exorbitant Prices, and remote Places, such as *Galloway* and the *Highlands*, being ill furnished; And People fearing, that such a thing might be a Preparative for the Pre-emption of Coal, Corn, &c. which occasioned a general Clamor in the Country: To still the same, and to remove all such Jealousies and Prejudices, the Pre-emption of Salt was discharg'd by the Act 1. *Sess. 4. Parl. 2. Ch. 2.* (*b*) 'Tis observable, that the Word Grievances is not to be found in any of our Acts of Parliament before this. (*c*) Act 3. *Parl. 3. Ch. 2.* (*d*) Act 2. *Parl. 1. Ja. 7.*

as many Pints out of the Malt as they could, which hindred much the Consumption of Malt; Whereas a Duty imposed upon the Liquor indefinitely, occasions the Brewing of strong Drink: The two Merk upon the Boll was dissolved from the Crown, and turn'd into 3 *d.* upon the Pint of Ale and Beer, 3 *sh.* upon the Pint of Aquavita or strong Waters not made of Malt, 6 *sh.* upon the Pint of Foreign Aquavita, Brandy or strong Waters, and 30 *sh.* upon the Barrel of Foreign Beer. Which Equivalent was annex'd in place of the more uneasie Duty upon Malt (*a*). And there has been several additional temporary Excises imposed, for supplying the Exigencies of the Government, over and above the annex'd Excise.

5. The Parliament 1661 having created Fishing Companies, by the 33 Act thereof, Foreign Salt to be imployed upon that Trade (*b*) was declared free of Custom and Excise. But Fishes consumed in the Country were deprived of that Privilege by several Acts of Exchequer. And thereafter for securing the Kings Customs and keeping out superfluity of Foreign Salt, whereof vast Quantities were imported upon pretext of serving the Fishing: By the 12 Act *par. 2. Ch. 2.* The Importers of Foreign Salt were ordained to pay the Excise thereof, and that to be repaid by

(*a*) Act 28. *Seff. 5. Parl. K. W.* (*b*) The Ordering and Disposing of Trade with Foreign Nations, and the Laying Restraints and Impositions upon Foreign Imported Commodities, was Declared by the Act 27. *Seff. 3. Parl. 1. Ch. 2.* to be a Branch of the Royal Prerogative, competent to all Princes by the Law of Nations. But this Act was Rescinded, as Dangerous to the Liberty of the Subjects: Reserving His Majesties Customs and Impositions as then Established, *W. Parl. 1. Seff. 9. Cap. 7.*

the Customers, to such as could prove the employing of the Salt upon Fishes.

6. But now by the 7th Article of the Union, we are lyable to the *English* Excises upon all exciseable Liquors, except that there is a more easie duty upon the Barrel of our Ale or Beer sold by the Brewer at 9s. 6d. sterl. (a); And that we are not to be charg'd with any Imposition on Malt during the present War (b); and have a seven Years Privilege as to Salt made in *Scotland* (c). By the 8th Article all Foreign Salt imported to *Scotland* is chargeable at Importing with the same Duties as in *England*. Which (because the Duties of great Quantities thereof may be heavy on the Merchants Importers) is Ordained to be Cellar'd and Lock't up under the Keys of the Importer and the Officers appointed for Levying the Duties thereof. That the Merchant may have any Quantity his occasion requires, not under a Weigh or 40 Bushels at a time, giving security for the Duty of what he receives payable in six Months. But of all the New Impositions (as a polite and judicious Writer (d) observes none are so dangerous to the very being of Trade, as the high Duties laid upon Salt; which affects the common people in the whole course of their Living, (their chief Nourishment being salted Flesh) and may bring a general prejudice to Navigation.

7. For clearing the present state of Excise under the Union-establishment, I shall treat first concerning the Managers and Officers of Excise.

2. Of the Persons lyable to the Excise, and what

(a) Vid. *infra* Sect. 2. (b) Art. 13. and 14. of the Union.
(c) Vid. *sup.* Chap. 2. N. 1. (d) *Davenants* Essay on the Methods of making a People Gainers in the Balance of Trade, Sect. 4.

legal checks they are under, to prevent their eluding the same. 3. Of Excisable Liquors, and the respective Rates or Quantities of the Excise-duty, and of the Allowances and Eases given to persons liable for the same. 4. How the Excise is to be entered and paid. 5. Of Action competent about Excise Matters.

S E C T. I.

Concerning the Managers and Officers of Excise.

1. **T**HE *English* Excise Revenue was managed at first by Commissioners and Sub-commissioners : but now there are no Sub-commissioners. No Member of Parliament can be a Commissioner or Farmer of the Excise (a). Nor may any commissioner of Excise directly or indirectly farm the same ; Nor is any Farmer capable to be a Commissioner : And Acts done by persons so disabled in either Capacity, are not only void in Law, and annul the Farm and Commission ; but also infer an utter incapacity to be either Farmer or Commissioner of the Excise Revenue. Again, no Commissioner or Farmer of Excise is capable to act as a Justice of Peace in matters of Excise (b). The Commissioners of the Excise at *London* are Judges in the first instance in Controversies betwixt their under Officers and the Brewers, &c. But our Commissioners have no Jurisdiction, but allennarly power to gather in and receive the Revenue. Nevertheless they can appoint Supervisors, Gaugers, and other inferior Officers : and, I

(a) 11. & 12. W. 3. Cap. 2. (b) 15. Car. 2. Cap. 11.

think, may compound with any Inn-keeper, Victualler or Retailer for their Excise-duty (a).

2. Gaugers are authorized to give the stamp of Allowance to all Vessels containing Excisable Liquors. By the 15. *Car. 2. cap. 11.* two able Artists are to be appointed, one by the Commissioners or Farmers of Excise, and the other by the Brewers of the place, to compute the just Contents and Gauge of all Brewing Vessels belonging to Brewers of Beer or Ale to sell, according to the Measures Establish'd by Law; And to deliver one Copy thereof to the Commissioners or Farmers, and another to the respective Brewers (b). Gaugers may by Day, or in the presence of a Constable or other Officer by Night, enter into any place belonging to Brewers, Distillers, Inn-keepers, Victuallers or other Retailers, and take an account of their excisable Liquors, by Gauging the Vessels containing the same, and make return thereof to the Commissioners of Excise, leaving a Copy under their Hands with the Brewers and others foresaid, which Return is a charge on the Brewers, &c. (c). The Gauger shall within three days after the end of every Week leave with the Brewer or Retailer, or their Servants, a true Copy of every Charge made by him in such a Week. And in case of Refusal, or if he shall charge any Brewer or Retailer more than such a Copy contains, he Forfeits ten Pound. And they are to leave Notes with all common Brewers or their Servants of every Gauge, if demanded, containing the Inches and Tenths of the backs, and wants

(a) 12. *Car. 2. Cap. 23. & 24.* (b) 15. *Car. 2. Cap. 11. vid. supra Ch. 1. N. 2. P. 9.* (c) 12. *Car. 2. Cap. 23. & 24.*

of Tuns, on Penalty of Forty shillings half to the King, and half to the Informer (*a*). Gaugers have power to Gauge all Coppers, Fats and Vessels in any Brew-house or other places belonging to or used by Brewers, Inn-keepers, Victuallers or Retailers of Beer or Ale; And to take account of Beer, Ale and Worts; and to make Returns in Writ to the Commissioners of Excise, to be a charge upon the Brewers. And where the Gauger finds any Worts amissing, or not fairly let down into the Tun, he may charge so much Beer or Ale as the Worts amissing would reasonably have made (*b*). If any small Beer, or old return'd Drink, be mix'd with strong Beer or Ale remaining in the Brew-house, and the mixture added to a Guile of New-drink, the Gauger shall charge the whole as New (*c*). A Gauger may taste the Drink upon any Brewers Dray, and may enter into any Inn-keeper or Victuallers Cellar or other Rooms to taste their Drink. Gaugers may enter the Distilling-house of any Distiller, and take account of any decayed Wines, Cyder or other Materials fit for Distillation. And may take off the Head of any Still not at Work, to see what Materials it is charged with: and if at work, may stay in the Distilling-house till the Still is wrought off (*d*). Gaugers and Officers of Excise should keep an account of all Mollossus-Wash in Distillers hands, and upon decrease thereof may charge them with so much Low-wines (*e*), as a Fourth part of the Wash shall amount to, and with so much proof Spirits (*f*) as two Third parts of the Low-wines so charged shall

(*a*) 7. & 8. W. 3. Cap. 3. (*b*) 1 W. & M. Cap. 24. (*c*) 8. & 9. W. 3. Cap. 19. (*d*) 7. & 8. W. 3. Cap. 3. (*e*) *i. e.* Spirits of the 1st Ex traction, commonly called here Single Et ra. (*f*) *i. e.* Spirits of the second Extraction. amount

amount to (a). And upon the decrease of Wash made from malted or unmalted Corn, the Gauger may charge the Distiller with so much Low-wines as One Fourth of the Wash so decreased shall amount to, and with so much proof Spirits as Three Fifths of the Low-wines amount to. And upon the Decrease of Wash from Cyder or Perry, they may charge the Distiller, upon whom the Decrease is found, with so much Low-wines as comes to a Fifth part of the Wash, and with so much proof Spirits as half of the Low-wines amounts to (b). Spirits drawn from any mixture with Wash or other Liquors, except Water, are chargeable with the Duty on Low-wines drawn from Foreign Materials (c). Bribes are not to be given to, or taken by any Gauger, to make a false Return or Report to the Excise Office, of any exciseable Liquors, or to omit his Duty under the pain of Ten pound to be payed by the Giver, and as much by the Receiver, a third to the King, a third to the Poor, a third to the Informer, to be adjudged by two Justices of the Peace or chief Magistrat of the Place where the Offence is committed, and to be Levied by distress (d), and sale of the Offenders Goods: And the Offender for want of sufficient distress to be Imprisoned three Months without Bail (e).

3. Distillers refusing to permit Gaugers in day-time, or in presence of a Constable under night, to enter their House, Distilling-house, Store-house, or other places belonging to or us'd by them, shall Forfeit fifteen pound, one half to the King, and the other to the Informer [f]. Com-

(a) 10. & 11. W. 3. Cap. 21. (b) 4. & 5. Anne R. (c) 10. & 11. W. 3. Cap. 4. (d) i. e. Seizure and Attachment of Goods. (e) 15. Car. 2. Cap. 11. [f] 1. W & M. Cap. 24. *junct.* the two Acts of 12. Car. 2.

mon Brewers, Inn-keepers, or Victuallers, shall Forfeit 20 pound, if they refuse to permit any Gauger in the day-time, or with a Constable in the night, to enter their Houses, Brew-houses, Store-houses, or other places us'd by them, or permit not the Gauger, being entered, to stay and take an account of the several Worts as they are brewed off, and see the strong and small Drink cleansed, & Gauge the Mesh-tun, or take an account of the Malt from which the Worts are drawn. Brewers, Distillers, or others, hindering any Officer of the Excise to enter to search for private Backs, Tunns, or other Vessels, shall Forfeit 20 pound. If any Inn-keeper, or Victualler, hinder a Gauger to enter his Cellar, or other Rooms, or being entered, to taste the Drink there, he shall Forfeit five pound *toties quoties*. And if any Distiller hinder the Gauger to enter and stay in the Distill-house, till he see the Stills wrought off, and examine the Materials therein, he shall Forfeit 20 pound. If Makers or Retailers of Vinegar, Cyder, Mead or Sweets [a], refuse to permit the Gauger to enter and take account of their Liquors, they shall Forfeit 15 pound, half to the King and half to the Informer [b]. If any common Brewer, or other person, shall oppose the Gauger, or Officer of Excise, in searching for private Pipes or Holes, &c. they Forfeit 50 pound, half to the King, and half to the Informer [c]. If Distillers hinder any Gauger or Officer to search for private Pipes, Holes, or other Conveyances from one

[a] All Liquors made by Infusion, Fermentation, or otherwise, from Forain Fruit or Sugar, mixt with other Materials, and commonly used for recovering, increasing, or making of any kind of Wine, are called *Sweets*, 10. & 11. W. 3. Cap. 21. [b] 7. & 8. W. 3. Cap. 3. [c] 8. & 9. W. 3. Cap. 19.

Vessel or Place to another, they shall Forfeit 100 pound, half to the King, and half to the Informer [a]. If any Distiller or other person hinder them to search for privat concealed Stills, Backs, or other Distilling Vessels, they shall Forfeit 200 pound to be so divided betwixt the King and the Prosecuter [b].

4. The inferior Officers of Excise are Ordained to continue in their respective Employments, notwithstanding the Death or Removal of the Commissioners who put them in, unless turn'd out by them [c]. Because tho ordinarily *Mortuo Mandatore Expirat Mandatum*: Yet if by the Death of the Commissioners of Excise, or by Revocation of their commission, the Authority of Inferior Officers flowing from them should fall, there would be a prejudicial Interruption in the due uplifting of the Excise Duties.

5. No person can act as a Commissioner or Officer of Excise till he hath taken the Oaths of Allegiance and *de fideli*, and subscribed the former with the Assurance, before two Justices of Peace in the County where the employment is to be, or before a Baron of the Exchequer. By the Oath *de fideli* they are to swear to execute the Office truly and faithfully without Favour or Affection; And that they shall from time to time true account make, and deliver to such Person or Persons as Her Majesty shall appoint to receive the same; and shall take no Fee or Reward for the Execution of the Office, from any other Person than from Her Majesty, or those whom Her Majesty shall appoint in that behalf. The taking of which Oath the Justices of Peace shall certifie to

[a] 10. & 11. W. 3. Cap. 4. [b] 10. & 11. W. 3. Cap. 4. & 21. [c] 7. & 8. W. 3. Cap. 3.

the next Quarter Sessions there to be Recorded [*a*]. No Money or Reward is to be taken or demanded by any Commissioner or other person employed about the Excise, except from their Majesties on pain of forfeiting their Offices, and incapacity of any Office in Excise for the future ; Upon proof thereof by two or more credible Witnesses before any two Justices of Peace (*b*). No Supervisor, Gauger or other Officer concerned in the Excise shall meddle in the Election of Members of Parliament, under the pain of 100 pound to be divided betwixt the Informer, and the poor of the Parish, where the Offence is committed, and incapacity of bearing any Office of Trust (*c*). Any Officer of the Excise conniving at the clandestine Importation of *French Brandy*, or concealing the same, or compounding without Licence with any person concerned, are to be incapable of any Office about the Revenue, and to forfeit 500 pound to be divided betwixt the Queen and the Informer (*d*).

[*a*] 12. *Car. 2. Cap. 23. & 24. 15. Car. 2. Cap. 11.* (*b*) 1. *W. & M. Cap. 24.* (*c*) 5. & 6. *W. & M. Cap. 20.* (*d*) 1. *A. Sess. 1. Cap. 14.*

S E C T. II.

Of the Persons lyable to Excise, and the legal checks they are under to prevent their Eluding the same.

THE Persons lyable to Excise are Brewers, Retailers, Distillers, and makers of Vinegar, Cyder, Mead, Sweets, &c. of whom I shall treat in order as they ly.

1. No Brewer or Inn-keeper can act as a Justice of Peace in matters of Excise (*a*). And the late Proclamation names the eldest Magistrat in other Royal Burghs than *Edinburgh*, to be Justice of Peace in the Burgh where he Resides, if not a Brewer there. Yea, by the 23. *H. 8. cap. 4.* a Brewer is prohibited to be a Cooper: And ordained to sell his Beer and Ale at such Rates as the Justices of Peace shall determine. Brewers and Retailers of Beer or Ale are ordained to sell the same at the usual Rates; but Brewers may take the Excise over and above (*b*). By the 15. *Car. 2. cap. 11.* If any common Brewer, Inn-keeper, Victualler or Retailer, without giving notice at the next Excise Office, erect, set up, alter or enlarge any Tun, Fat, Back, Cooler or Copper, and use the same, or shall make use of or keep any privat conceal'd Store-house, Cellar or Place for laying Beer or Ale or Worts in; he forfeits 50 pound, and the Possessor of the House where any such thing is found doth also forfeit 50 pound. Of which Fines one third goes to the King, a third to the poor, and another third to the Informer: Besides that the discovered, unlawfully concealed or altered or enlarged Vessel, with all the Liquor therein, may be adjudged and sold by the Justices for the poors use. But thereafter (*c*), a further check of 200 pound of penalty, half to the King and half to the Informer, was put upon common Brewers, who were not found sufficiently restrained by the former Law, from privately setting up, altering or enlarging their Vessels, without giving notice to the Excise Office. No

(*a*) 15. *Car. 2. Cap. 11.* (*b*) 12. *Car. 2. Cap. 23. & 24.* (*c*) 3. & 9. *W. 3. Cap. 19.*

common Brewer shall deliver out any Drink to their Customers, but betwixt three a Clock in the Morning and nine at Night, from the 25 *March* to the 29 *September*, and between 5 in the Morning and 7 in the Evening from the 29 *September* to the 25 *March* on pain to forfeit 20 shillings for each *Barrel* otherways carried out, and common Brewers or Retailers converting small drink into strong by Mixture after the Gauging, without notice to the Gauger, or concealing ungaged drink, forfeit 20 shillings for every *Barrel*, one third to the King, one third to the poor, and one third to the Informer [a]. If any common Brewer, Inn-keeper or Victualler, cleanse, carry or remove out of his Brew-house any part of his Guile or Brewing, before the whole is brewed off, and in his Tuns, Backs or Coolers, without giving notice to the Supervisor or Gauger, he shall forfeit two pound for every *Barrel*, to be divided betwixt the King and the Informer [b]. No common Brewer who hath compounded for the Duties of his own Excise, shall, during the Term of the Composition, suffer any Beer or Ale to be brewed in his Brew-house for any other common Brewer, without previously acquainting the Commissioners or Farmers of Excise, & paying the Excise, both he that brews, & he for whom, shall forfeit for every *Barrel* five pound, to be divided betwixt the King and the Informer (c). If any privat person inhabiting in a Mercat town where there is a common Brew-house, lend their immoveable or fixt brewing-vessels, or suffer any Ale or Beer to be brewed therein, except for their own Families

(a) 15. Car. 2. Cap. 11. (b) 7. & 8. W. 3. Cap. 3. (c) 15. Car. 2. Cap. 11.

or for Charity, or *gratis*, they shall forfeit 50 pound to be divided betwixt the King and the Informer, if pursued within six Moneths after the Offence [a]. A common Brewer or his Servants must declare to the Gauger how much of each Guile he intends to make strong, and how much small Drink, before any part is cleansed or removed out of his Tuns, on pain to have the whole Guile charged strong, and to forfeit twenty shillings for each Barrel therein-contained. And if any increase be made of the strong after the length is declared, the Brewer shall lose for every Barrel of increase five pound; and the servant concerned or assisting in making the increase shall forfeit 20 shillings for each Barrel thereof, or suffer three Months Imprisonment. These Fines are to be divided betwixt the King and the Informer (b). If any Brewer or Inn-keeper, upon or after carrying out of his Drink do mix small with strong upon his Dray, or in any Victuallers Cellar or else where, he shall forfeit five pound *toties quoties*, to be divided betwixt the King and the Informer (c). Common Brewers or Retailers of Beer or Ale, making use of any Molossus, coarse Sugar, Honey or other Composition, in Brewing or Working of Ale or Beer, or common Brewers taking into their custody any Quantities of these Ingredients, exceeding Ten pound, to forfeit *toties quoties*, respectively, 100 pound half to the King and half to the Informer. And the Servant or other Assistant in the using any Molossus, coarse Sugar, Honey, or extract of Sugar, in the Brewing or Working of Ale or Beer, or in conveying the

(a) 22. & 23. Car. 2. Cap. 5. (b) 8. & 9. W. 3. Cap. 19. (c) 7. & 8. W. 3. Cap. 3. same

same to any place belonging to the Brewer, shall forfeit 20 pound, or suffer three Months Imprisonment (a). Every common Brewer having any Pipe or stop-cock under Ground, or any other Pipe or privat Conveyance in or about his Brew-house, by which any Beer, Ale or Worts may be conveyed, from one Vessel to another, or to any other place, shall forfeit 100 pound, half to the King and half to the Informer. Without prejudice to the using of publick Pipes or Conveyances above ground.

2. Any person making or keeping any Materials fit for Distillation, and having in his possession any still containing 20 Gallons or more, shall be esteemed a common Distiller for Sale, and lyable to the Duties and Penalties of Excise (b). If any Distiller or maker of Low-wines shall, after an account hath been taken by the Gauger of the Quantity thereof, sell or dispose of, or Remove the same without drawing them off a second time, he shall Forfeit five shillings per Gallon, half to the King, half to the Informer (c). No Distillers, or others, drawing Low-wines, or Spirits, from prepared Corn, shall prepare any Wash from Moloffus, or any Materials, or receive the same from any other Person, until they have drawn off all the Liquors made from Corn, on pain to forfeit 5 lib. for each Barrel of such Liquors made of Corn, found undistilled or drawn into Low-wines, half to the King and half to the Informer (d). If any common Distiller conceal, or convey away any Low-wines, Spirits, or strong Waters for Sale, from the sight of the Gauger, he shall Forfeit five shillings per Gallon (e). No common Distil-

(a) 10. & 11. W. 3. Cap. 21. (b) 8. & 9. W. 3. Cap. 19. (c) 1. W. & M. Cap. 24. (d) 7. & 8. W. 3. Cap. 3. (e) 3. W. & M. Cap. 15. ler

ler shall set up, make use of, or alter any Tun, Cask, Wash-batch, Copper, Still, or other Vessel for Brewing, or making Worts, Wash, Low-wines, Spirits, or strong Waters for Sale; Nor keep or use any such private Vessel, or any privat Store-house, for Laying of any Wash, Low-wines, or Spirits, without previous notice given at the next Excise Office, on pain to Forfeit 20 Pound *toties quoties*; And the Possessor of any House or Place, where any such private or concealed Tun, Cask, Wash-batch, Copper, Still, Store-house, or Cellar, shall be discovered, to Forfeit 70 Pound, half to the King, and half to the Informer (a). Distillers should Draw Low-wines from Malt-drink intirely, without Mixture of Molossus-wash or Tilts, or other Materials. And Low-wines drawn from Malt-drink so mixed, shall be charged with the Duty of 12 Pence a Gallon. No Distiller shall distill or carry out Low-wines, or Spirits, to any of their Customers, unless between five in the Morning and eight at Night, from the twenty ninth of *September* to the twenty fifth of *March*, and between three in the Morning and nine in the Evening from the 25 of *March* to the 29 of *September*, on pain of ten Pound for each Offence, half to the King, and half to the Informer (b). If Distillers keep any private Pipe, hole, or other Conveyance from one Vessel or Place to another; By which, any Wash, or other Liquors fit for Distillation, may be conveyed, they shall forfeit 100 pound, half to the King and half to the Informer (c). Distillers keeping any private conceal'd Still, back or other Vessel fit for Distil-

(a) *Ibid.* & 8. & 9. W. 3. Cap. 19. (b) 7. & 8. W. 3. Cap. 3.
(c) 10. & 11. W. 3. Cap. 4. D 2 ling

ling, or any person in whose Custody the same is found, shall forfeit 200 pound, half to the King and half to the Prosecutor (a).

3. For every Barrel of Vinegar or Liquor prepar'd for Vinegar, or Sweets concealed or convey'd away from the View of the Gauger, the Maker thereof shall forfeit two pound, half to the King and half to the Informer. And for every Hogshead of Cyder so conceal'd or convey'd away, the Cyder Maker shall pay twenty pound, and so proportionably for greater or lesser Quantities. And for every Gallon of Mead so concealed or abstracted, the Maker thereof shall forfeit 5 shillings, half to the King and half to the Informer. No maker of Vinegar or Sweets shall sell, deliver or carry out any to Customers, except betwixt five in the Morning and eight of the Clock at Night, from the 29 of *September* to the 25 of *March*, and between three in the Morning and Nine at Night, from the 25 of *March* to the 29 of *September*, under the pain of 40 shilling per Barrel, half to the King and half to the Informer (b). No Vinegar maker shall receive into his Custody any Liquors proper to be made into Vinegar, nor carry out any Vinegar in Casks, or by the Gallon without notice to the Gauger, unless between 7 in the Morning and 5 at Night, from the 29 of *September* to the 25 of *March*; and between 5 in the Morning and 7 in the Evening, from the 25 of *March* to the 29 of *September*, under pain of 50 pound, half to the King and half to the former (c). No Sweet maker shall set up or make use of any steeping-tub, Tun, Cask or other

(a) *Ibid* & Cap. 21. (b) 7. & 8. W. 3. Cap. 3. (c) Ric. & 11. W. 3. Cap. 21. Vessel

Vessel for the making or keeping of Sweets, without notice given at the next Excise Office upon pain to forfeit 50 pound, half to the King and half to the Informer [*a*]. Vinegar makers must shew any Liquors they take in to the Gauger, before the mixing of them with other Liquors or Materials, on pain to forfeit 20 pound. And if they keep private Store-houses, Cellars or other places, for making, laying or keeping any Vinegar, Vinegar-beer, or Liquors preparing for Vinegar, without acquainting the Excise Office, they shall forfeit 50 pound ; which Penalties are to be divided betwixt the King and the Informer [*b*]. No Brewer or maker of Cyder shall deliver to any Distiller or Vinegar maker any Wash, Tilts, Ale, Beer, Vinegar-beer, or cyder, without acquainting the Gauger within whose District he lives, on pain of 20 shillings *per* Barrel, half to the King and half to the Informer [*c*].

(*a*) 8 & 9. *W. 3. Cap. 22.* (*b*) 10. & 11. *W. 3. Cap. 21.* (*c*)
8. & 9. *W. 3. Cap. 19.*

S E C T. III.

Concerning Exciseable Liquors, and the respective Rates or Quantities of the Excise duty : And the Allowances and Eases given to Persons liable for the same.

1. **B**Y the *English Statutes* [a], the Barrel of strong Beer and Ale above six shillings, pays of present Excise Duty 4 *shill.* and 9 *d.* the Barrel of small Ale or Beer at 6 *sh.* or under, pays 1 *sh.* 3 *d.* Metheglen or Mead pays *per Gallon*, Wine Measure 10 *d.* single Brandy imported pays *per Gallon* 3 *sh.* 8 *d.* Double Brandy imported 6 *sh.* 8 *d.* and no Foreign Brandy or Spirits are to be imported in any ship under 15 Tuns of Burden, except for the use of the Sea-men on Board, not exceeding a Gallon for each Sea-man, on Forfeiture of the Brandy or value, a Moyety to the King, and a Moyety to the Informer [b]: Nor to be Imported in any cask or Vessel under 60 Gallons on pain of the like Forfeiture, to be applyed in the like manner [c]. But now by the 7 Article of the Union the thirty four Gallons *English* Barrel of

(a) 12. *Car.* 2. *Cap.* 23. & 24. 4. *W. & M.* *Cap.* 3. 5. & 6. *W. & M.* *Cap.* 7. & 20. The Liferent Excise granted to King *Charles* 2d, by the foresaid Act 23, being continued and kept up by Statutes in the Reigns of *K. W.* and *Q. M.*, *K. W.*, and our present Sovereign Queen *Ann.* (b) 12. & 13. *W.* 3. *Cap.* 11. (c) 4. & 5. *W. & M.* *Cap.* 5. The Importing of strong Waters, *Aquavita.* or Beer, (except Black or Spruce Beer) to *Scotland*, was once discharg'd, under pain of Escheat thereof, *Act* 7. *Sess.* 3. *Parl.* 1. *Ch.* 2. because they prejudged the Sale of Barley, our great Native Commodity. But the *Act* 2. *Sess.* 4. of that same Kings 2d *Parl.* did License the Importation of Brandy and Mum, or *Bremer* Beer, and Imposed Duties of Custom and Excise upon the same.

Beer or Ale [a] amounting to 12 Gallons of present Scots Measure, sold here by the Brewers at 9 sh. 6 d. excluding all Duties, and Retailed, including Duties and the Retailers profit at 2 d. the Scots pint, is only lyable upon the account of the present Excise to 2 shillings. This payment of the Excise Duty for Beer and Ale, the Privy Council in their late Proclamation concerning the Rates and Duties of Excise have interpreted thus; strong Beer or Ale above 11 sh. 6 d. Duty included [b], pays per Barrel 4 sh. 9 d. strong Beer or Ale from above 6 sh. to 9 sh 6 d. the Barrel, Duty excluded, pays 2 sh. small Beer or Drink under 6 sh. the Barrel, 1 sh. 3 d. Cyder or Perry imported pays 12 lib. 10 sh. per Tun, and Home Cyder and Perry pays 10 sh. 3 d. per Hogshead, containing 63 Gallons Wine Measure [c], Verjuice pays 6 sh. 3 d. [d]. Mum Imported pays per Barrel containing 32 Gallons Wine Measure one pound 5 sh. [e]. Sweets pay per Barrel containing 31 Gallons one two part, one pound 16 sh. Vinegar pays per Barrel, containing 34 Gallons Ale Measure 8 d. [f]. The Gallon Wine Measure of Low-wines drawn from Forein Materials, or any Mixture therewith pays 6 d. Low-wines from Wash made of Malt or Corn, or from Brewers

(a) Thirty Six Gallons of Beer, and Thirty Two of Ale, according to the Ale Quart in Exchequer, go to a Barrel of Beer and Ale in London, and within the Bills of Mortality. But Thirty Four Gallons are reckoned a Barrel of Beer or Ale in all other places of England, 12. Car. 2. Cap. 23. & 24. junct. 1. W. & M. Cap. 24. (b) Whereby the Duty of Two Pennies Scots on our pint, granted by Act of Parliament to Edinburgh, and some other Burghs, is excluded. (c) 12. Car. 2. Cap. 23. & 24. junct. 1. A. Sess. 1. Cap. 3. (d) 7. & 8. W. 3. Cap. 3. junct. 12. Car. 2. Cap. 23. & 24. (e) 12. Car. 2. Cap. 23. & 24. 4. W. & M. Cap. 3. 5. & 6. W. & M. Cap. 7. & 20. 1. A. Sess. 1. Cap. 3. (f) 10. & 11. W. 3. Cap. 21.

Wash [*a*] or Tilts, one penny, and Low wines from any other Native Materials 3 half-pence [*b*], Strong-waters and Aquavitæ, pays 2 pence per Gallon, Spirits made of Wine or Cyder imported, pays 4 *d.* per Gallon [*c*], Spirits or Brandy imported from *Guernsey* or *Fersey* pays per Gallon 8 shillings; and all other Exciseable Liquors brought from the said Islands [except Beer, Ale and Mum] pay the same Duties as the like Liquors made in *Great-Britain*, are chargeable with [*d*].

2. But common Brewers, not selling by Retail; in *London*, and within the Bills of Mortality, are allowed, out of the Gaugers Returns, three of twenty three Barrels of Beer, and two of twenty two Barrels of Ale, for waft by filling and leakage. And Brewers without the Bills of Mortality are allowed 2 and one half of twenty three Barrels whether Beer or Ale. Which allowance they forfeit for six Months, beside other Penalties, by willingly making false Entries (*e*). And where warm Worts are gaug'd, the Brewer, Inn-keeper or Retailer is to have allowance of a tenth part thereof for Wash (*f*) and Waft (*g*).

3. But here, *October* 1. 1707, the Justices of Peace of *Midlothian*, at their General Meeting, were of Opinion, that the different way of Malting and Brewing in *Scotland* from that in

(*a*) Distilling-wash, (which is either made of Molossu, or of Corn) is Raw-worts, or other Materials Fermenting, in order to Distillation. (*b*) 12. & 13. *W.* 3. *Cap.* 11. *juncl.* 4. & 5. *Anna.* & 3. *A.* (*c*) 12. *Car.* 2. *Cap.* 23. & 24. (*d*) 2. *W.* & *M.* *Cap.* 9. 12. & 13. *W.* 3. *Cap.* 11. (*e*) 12. *Car.* 2. *Cap.* 23. & 24. 1. *W.* & *M.* *Cap.* 24. (*f*) 1. *W.* & *M.* *Cap.* 24. *i. e.* The thick Stuff that remains after the clear Wort is let down into the Tun. (*g*) *i. e.* That part of the Wort that evaporates into Smoke by the Heat.

England, required a greater Allowance than a tenth part of Warm-worts for Wash and Wast. But we must expect the final Determination of that matter from their next General Meeting, or from the Parliament of *Great-Britain*. And in respect of the difference whereby the Brewers sell or give out their Liquors, and the Standart of the *Stirling* Jugg, the said Justices ordained all these to be changed, and reduced to the foresaid Standart betwixt and the first of *November* next: And the Brewer failzieing so to reduce his Barrels against that day, and thereafter making use of any of them unreduced, to forfeit the same with the Liquor therein, and also five shilling *sterling*. And ordained the Coopers imployed by Brewers, to mark the Barrels they make with their Names, and the number of Gallons they contain: And for each Barrel that shall be found to differ from the *Stirling* Standart, the Cooper who made it, to be liable to the Brewer for any Damages he shall sustain thereby, and for ten shilling *sterling* of penalty. Which Confiscation and Penalties should be prosecuted at the *Fiscals* instance, and disposed of at the sight of the Justices. Again, The said Justices of Peace recommended to the Dean of Guild of *Edinburgh* to order his Officer to see Barrels measured and marked with his Mark.

S E C T. I V.

Concerning the Entry of Excisable Liquors, and Payment of the Excise.

- I. **F**OR Ascertaining the payment of Excise, the Methods of Gauging and Entry are used: Of the former whereof, I have spoken

spoken already (a). An Office of Excise is to be kept in every Market-town, on every Market-day, and a Person to be Deputed to attend there, for receiving Entries and Duties of Excise from nine in the Morning till twelve, and from two till five Afternoon, on pain of ten pound for not attending the Office each Market-day, to be paid by the Commissioners, Farmers, &c. half to the King and half to the Informer. All common Brewers, not making due and particular Entry at the Excise-office once a Week, of what they Brew in that Week, forfeit 15 pound, and Retailers not making entry once a Moneth of what they Retailed in that Moneth, forfeit ten pound if an Inn-keeper, and 40 shillings if another Retailer. Of which Fines and Forfeitures three fourths go to the King, and one fourth to the Informer after Charges deducted (b). Brandy going Coast-ways is not to be landed without Entry: under pain of forfeiting double the value (c).

2. Both the *Scots* and *English* Laws do oblige people to the due payment of Excise by penal *Certifications* (d). By the Act 14. *Sess.* 1. *Par.* 1. *Ch.* 2. the Goods of Deficients in payment of the Excise were ordained to be pointed and apprised at the next Parish Church-door: which is like the Privilege given to Ministers, for payment of whose stipends Goods pointed may be apprised upon the Ground where they are, without necessity of carrying them to Mercat-crosses (e). The

(a) *Vid. sup. Sect.* 1. *N.* 2. (b) 12. *Car.* 2. *Cap.* 23. & 24. (c) 15. *Car.* 2. *Cap.* 11. Entry of Brandy going by Coast-cocket is required, tho no Duty can be exacted for the same, lest, under the Cover thereof, Uncustomed Brandy might be smuggled. (d) *Certification* (a *Scots* Law Term) is a Declaration of the Penal Consequences of Disobedience to Law. (e) *Act* 21. *Sess.* 3. *Parl.* 1. *Ch.* 2.

Excise of Foreign Liquors must be payed in Money upon entry before Landing: and a warrant must be obtained from the Excise Officer for Landing; on pain of forfeiture of the Goods or value, half to the King, half to the Informer (a). Common Brewers not clearing the Duty of Excise within a week, after they make or should make their Entry, shall pay the double: three fourths of which Penalty belongs to the King, and one fourth to the Informer, after Charges deducted. And no Beer or Ale is to be delivered by the Brewer to the Retailer till the Excise be payed. But for Beer or Ale sold in Fairs by By-Brewers no Penalty is incurred if the Excise be paid before Sale [b]. Importers of French Brandy before the Duty is payed or agreed for, and their Assistants, and the Concealers thereof after landing, forfeit the same and the double value, half to the Queen and half to the Informer [c].

3. Several persons within the Northern Shires of Ross, Sutherland, Caithness, Argyle, Inverness and Burghs thereof, being in arrear and deficient in payment of a considerable part of the Kings Annuity of Excise, notwithstanding all Diligence used for inbringing thereof, It was declared by the Act 20. Sess. 1. Par. 2. Ch. 2. that if three Quarters payment of the Excise Annuity should run in the fourth unpaid, then the Shire, Burgh or Person deficient was to be lyable in the double of the whole Years Annuity *toties quoties*. Without prejudice to the Obligation for single payment by the Commissioners of Excise in these Shires. But S. G. Mackenzie observes that, that Act was

(a) 12. Car. 2. Cap. 23. & 24. 15. Car. 2. Cap. 11. [b] 12. Car. 2. Cap. 23. & 24. [c] 1. A. Sess. 1. Cap. 14.

never put in Execution. Because, it seemed unjust to put some Shires in a different condition from the rest, in a common concern: the legal way being to use stricter Execution against them. And whatever might be done at the first laying on of an Imposition, it were hard to take such a severe course after it is laid on: For probably these Shires would not have consented, had they foreseen any singularity of dealing with them in the uplifting. Nor did they consent to the Excise but upon equal Terms with other Shires. Again, The Taxation was a voluntary offer, and therefore should not be otherways exacted than in the Terms of the Offer. And otherwise any Shire for the future would be discouraged from offering or consenting to any Taxation; seeing they could not be sure but a prevailing Party, or the passion of some leading Men might get it doubled upon them.

4. Because sometimes upon imposing new additional Excise Duties, Brewers are apt to forbear to brew for a time, and some would begin to brew for their own use, who were not in use formerly so to do: For obviating these practices it hath been provided by several Acts of our Scots Parliament [a], That if after the imposing of the Additional Excise Duties therein mentioned, any Brewer in use to brew for Sale and Change should give over brewing without an allowance from the Commissioners of Excise, should not be permitted to brew for change for the space of five Years thereafter. And that Persons beginning to brew for their own use who were not accustomed to do so

(a) *Act 3. Sess. 4. Parl. W. & M. Act 28. Sess. 5. Act 2. Sess. 6. Parl. K. W.*

before should be liable to pay Eycise for what they Brew.

5. The Person who shall prove a Tender of his Entry, or payment of the Duties by the Oath of one or more sufficient Witnesses, is free from any Penalties for Non entry or not payment for that time. And no Brewer shall be prosecuted for mis-entry or short-entry, if within a Week after he doth rectifie his Entry by the Gaugers Return, or otherwise discharge himself (a). Altho' commonly *pœna delictorum non tolluntur pœnitentia* (b).

(a) 15. Car. 2. Cap. 11. (b) Bruneman, Comment. in Pandect, Lib. 47. Tit. 2. l. 65

S E C T. V.

Of Action and Diligence competent about Excise Matters.

1. **M**atters of Excise in London, and within the Bills of Mortality, are judged by the Commissioners of Excise : from whom there lyes an Appeal to the Commissioners of Appeal. But these Appeals are not admitted unless brought within two Months after the first Judgment : And the single Duty be deposited, and security given to answer the Penalty decerned against the Appellant. If the Original Judgment be reversed on the Appeal, the single Duty shall be restored, and the Prosecutor pay double cost. If affirmed, the Appellant shall pay double cost (a). But in all places of England, without

(a) 15. Car. 2. Cap. 11.

the Bills of Mortality, and consequently here in Scotland, any two or more Justices of Peace are the proper Judges in Excise Matters: And I don't find that there lyes any Appeal from them, but their Sentence seems to be final (a). But in other Matters three Justices of Peace are a *Quorum* with us to judge in the Intervals betwixt Sessions (b).

2. The Justices of Peace for the more easie dispatch of Justice to the Liedges, do cast the Parishes of their respective Shires into several Districts. And such a cast of the Parishes of the Shire of *Edinburgh* was approv'd at the general Meeting of the Justices of that Shire the 30 of September 1707. According to which cast some Justices are named in several Districts; in consideration of the different Interests they have in several places. And any Justice within the Shire may sit and Judge in any such Court there, tho without his proper District. And the Justices in the Country Courts are lyable to sit and judge in Matters of Excise at *Edinburgh* when called; in respect the greatest Business about the Excise will be there.

3. Action for payment of the Excise duty; and for the Penalties of Contraveining the Rules of Excise, is competent to the Excise Officers against the not paying or Delinquent Brewers, Distillers, &c. And Brewing or Distilling Vessels and Utensils are liable for the Excise of what was brewed therein, and for the Penalties incurred by the Brewer or Distiller, tho belonging to another in Property (c). But Informations against Brew-

(a) 12. Car. 2. Cap. 23. & 24. (b) *Vid. sup. Ch. 1. N. 2. P. 9.*
 (c) 15. Car. 2. Cap. 11. 7. & 8. W. 3. Cap. 3.

ers or Ale-house-keepers, are not to be prosecuted unless they be entered within three Months after the Offence committed, and notice thereof be given to the Persons informed against in Writ, or left at their Dwelling-houses within a Week after exhibiting of the Information; that they may have a competent time to defend themselves (a).

4. Action for Damage and Interest is competent to Brewers, Distillers or others, against Gaugers or other Officers of Excise, at whose instance the Pursuers Ground, Partition-wall, House or other place was broken up, in order to find some privat concealed Backs, Tuns, Pipes, or other Conveyances, which upon search were not found. But what is decerned in name of Damages upon such an account, is payable out of the Revenue of the Excise (b): seing the Excise Officer was but discharging his Duty, & *Officium nemini debet esse Damnosum*.

5. Actions brought against Justices of Peace or others imployed by them in the Execution of 11 and 12 W. 3. cap. 15. for ascertaining the Measures of Beer and Ale are to be laid in the proper County, where the fact was committed and no where else. And if the Defender in any such action prevail and be assolizied, or the Pursuer discontinue his Action, the former shall have triple Expenses of Plea. For understanding whereof, by the said Statute, all Retailers of Ale and Beer were ordained to sell the same by a full Quart or Ale Pint, according to the standart in Exchequer, on pain to forfeit a Sum not exceeding 40, nor

(a) 1. W. & M. Cap. 24. 12. & 13. W. 3. Cap. 11. (b) 7. & 8. W. 3. Cap. 3. 8. & 9. W. 3. Cap. 19. 10. & 11. W. 3. Cap. 4.

under ten shillings for every Act of Contravention. And the Mayor or Chief Officer of every City or Town, shall cause all Ale Quarts and Pints made of Wood, Earth, Glass, Horn, Pewther or other wholesome Metal, that shall be brought to them to be measured and sized with the standart in their Custody, taken from the Original in Exchequer, and to be marked with *A. R.* and a Crown; And shall take but one Farthing for the stamping each Measure. And if any Retailer sell Ale or Beer in a Vessel not marked; or if he refuse to give an account of the number of Quarts or Pints of Ale he demands in his Reckoning; It shall not be lawful for him upon not payment to detain the Debtors Goods, but he shall be left to an Action at Law for the same. And the Mayor or other Chief Officer in any Town neglecting their Duty herein, shall Forfeit five pound, and be lyable to the Parties lesed in triple Damages, beside Expenses of Plea. Which Penalties and Forfeitures are to be divided betwixt the Prosecuter and the poor of the Parish where the Offence is committed; and to be recovered before one or more Justices of the Peace *in loco delicti*; and to be levied by their Order out of the Delinquents Moveables; He always being prosecuted within thirty days after committing of the Offence.

6. The Justices of Peace may, upon Complaint or Information exhibited before them, for Offences against the Laws of Excise, summon the Party accused; and upon his appearance or contempt, may proceed to examine the Matter of Fact, and

sustain

sustain the same probable by Oath of Party (*a*) or *pro ut de jure*. And if the Plaintiff chuse to prove his point by Witnesses, the Justices may cause cite Witnesses to clear the truth of the matter ; who, in case of their not compearing or refusal, upon compearance, to give Evidence when required, shall Forfeit Ten pound (*b*). For *qui testimonium dicere recusant penalibus mandatis compelli possunt*. And in all Crimes he who refuses to depone against a Delinquent, is no less guilty, than he who rescues him out of the hands of Justice : The contempt of Authority being equally great in both, and the prejudice arising to the Common-wealth the same (*c*). The Justices of Peace are allowed to give sentence in some cases, upon proof by one Witness ; as in the case of 12 Car. 2. cap. 23. & 24. And a Tender of Entry or payment at the Excise-Office is probable by one Witness to free from the penalty of Non-entry or not payment (*d*). Again, the Forfeitures for not Retailing Beer and Ale by the full Quart, and pint in Vessels marked by the chief Magistrat in Town or City, as measured conform to the Standart in their Custody, taken from the Original in Exchequer, and the Forfeitures of the said chief Magistrats for not marking and measuring all such Beer and Ale Vessels, as are brought before them for that Effect, are recoverable upon the Oath of one or more Credible Witnesses (*e*). For tho two Witnesses, at least,

[*a*] 12 Car. 2. cap. 23 and 24. and by the Act 8 Par. 22. §. 6. Act 38. Par. 1. Ch. 2. a person may be holden as confess upon two Citations at his Dwelling-house, to compare before the Justices of Peace, *vid. Sup. chap. 1. N. 2. P. 4.* (*b*) 7. & 8. W. 3. Cap. 3. (*c*) Mackenzie Observ. on the Act 2. Sess. 2. Parl. 2. Ch. 2. (*d*) 15. Car. 2. Cap. 11. (*e*) 11. & 12. W. 3. Cap. 15.

are ordinarily required to make a Legal Proof; And *unus Testis non auditur et si Praeclara Curia Honore praesulgeat* (a); Yet as, by the Civil Law, more than two Witnesses were necessary in some Cases of Testaments, Codicils, &c: So, by the Law of England, one Witness makes Faith in some Cases; As where the Tryal is by a Jury; And where the Justices, as here, are Authoriz'd by particular Statute, to Judge upon the Testimony of one. Tho Peers, when Defendants, are only obliged to Answer upon their Honour, they may be sworn as Witnesses in *Juramentum Probationis* (b).

7. It hath been observed, That the *Turkish* Country Magistrats, who are much like our Justices of Peace, determine Cases mostly without Oaths. And endeavour to pick out the Truth by *Queries*, observing Mens Countenance and Behaviour in their Answers, and by comparing Things together, and making the several Parties tell the Matter of Fact, or so much on't as they know, successively after their own way.

8. The Justices of Peace may, upon Proof adduced before them, issue Warrant to Levy Forfeitures on the Goods of Offenders, and to Sell them, if not Redeemed within *Fourteen Days*: And for want of Poindable Goods, to Imprison the Offending Party, till Satisfaction be made (c).

9. The Excise Officers cannot exact any Fines or Forfeitures for Contravention of the Laws of Excise, till it be found by Decreet of the Justices of Peace, that the same are incurred. And the Justices may mitigate such Fines and Forfeitures, according to their Discretion: So be, in

(a) 1. 9. §. 1. C. de Testibus. (b) Jones Reports, P. 152, 154, 155. The Earl of Lincoln's Case. (c) 12. Car. 2. Cap. 23. & 24. their

their Mitigation, they go not below the double Value of the Duty that should have been pay'd, besides the reasonable Charges of the Officers, or others therein imployed (*a*).

10. But these Penal Actions in Matters of Excise prescribe in a short time, according as they are more or less favourable. So, Actions against Persons lending their fix'd Brewing Vessels (*b*), And Actions against the Users of Molossus, Coarse Sugar, Honey, &c. in Brewing or Working Beer or Ale (*c*), must be commenced within six Months after the Offence. Informations against Brewers or Ale-house-keepers can only be prosecuted within three Months (*d*), And the Contraveeners of the 11. and 12. W. 3. Cap. 15. for Ascertaining the Measure of Beer and Ale, must be pursued within thirty days, after committing the Offence.

(*a*) *Ibid.* (*b*) 22. & 23. Car. 2. Cap. 5. (*c*) 1. W. & M. Cap. 24. (*d*) 1. W. & M. Cap. 24. 12. & 13. W. 3. Cap. 11.

THE CONCLUSION.

THUS I have made a shift to go throw stitch with the Law part of the Duty and Powers of our Justices of Peace. As for the Moral or Religious part, it is Pulpit-work, and the proper Business of Divines. I shall therefore conclude only with a short Christian *Monitory*.

The Station of a Justice of Peace requires a flock of Prudence, and a competency of Law and

humane Learning to bear out the Character. A Justice of the Peace is his Brothers Keeper ; and therefore should not sit an unconcerned Spectator of the Misfortune and Grievances of other Folks Condition, but should charitably interpose for their Relief. He should be Religious, Upright, Virtuous and orderly in his Life and Conversation : That there be no occasion to reproach him with those Crimes or Vices which he has Commission to hunt down in the Countrey. He ought not to abuse to evil purposes the power put in his hand for advancing GOD's Glory and the Good of Men : but to do good should be his highest Ambition. And in the dispensing of Justice he should neither be too faint, nor too peremptory ; and should equally avoid precipitate Haste, and unnecessary Delays. He must not stand in awe to do his Duty, *nor be afraid of the face of man, for the Judgment is Gods. He should not respect persons in Judgment, but should hear the small as well as the great* (a). Nor is he out of affected Pity and Compassion *to countenance a poor Man in his Cause* (b), any further than he hath Right and Reason on his side. In a Word, He is to act impartially, with clean Hands and honest Intentions, as in the sight of an Omniscent GOD, *whose Eyes behold, and whose Eye-lids try the Children of Men*, and before whose Tribunal he must give an account of the Deeds in the Body.

If our Justices of Peace behave thus, GOD *will deal well with them, and make them Houses* (c) : *And their End shall be Peace* (d).

(a) *Dent. I. 17.* (b) *Exod. 23. 3.* (c) *Exod. I. 20, 21.* (d) *Psal. 37. 37.*

A P P E N D I X.

CONCERNING WEIGHTS and MEASURES.

1. **H**AVING spoke but Overly (*sup. pag. 9. 63. and 64.*) concerning Weights and Measures : I thought fit to add some thing upon the subject by way of Appendix.

2. Mens Necessity was the Original and most Antient Measure of Things. But when they came to affect the having of Superfluities, various kinds of Weights and Measures were introduced in several Nations ; whereof *Cain* is said to have been the Inventer, from a principle of sordid Avarice and Covetousness. Weight and Measure may be defined in the General, *a certain known Quantity, which being applyed to things, shews how oft it is contained in them, or how much of it they contain.* Which in Trade goeth under several Names, according to the different Qualities of Goods, and different National Customs.

3. The Science of Weights is a *Species* of *Mechanicks* called *Statics*.

4. Measures are either applicative, *i. e.* Measures of length, whereof some Grains of Corn, or some parts of a humane Body is the Foundation : or they are receptive, *i. e.* Measures of Capacity, that are reckoned to have an Egg shell for their Foundation ; & are divided into liquid & dry Measures.

5. The selling or retailing Goods by uncertain Weights and Measures, being found of evil con-

sequence to the Publick & to privat persons, standing Weights and Measures authorized by publick Authority, have been set up in all Nations, conform to which the rest should be fram'd and adjusted, and by which, as a Touchstone, false Weights and Measures might be discovered. The publick Standarts of Weight and Measure in *Rome* were kept in the *Capitol* : And the *English* Standarts are kept in the Exchequer at *Westminster*. Our general standing Weights and Measures were the Eln, Firlot, Stone-weight, and Jugg ; whereof the first was kept in *Edinburgh*, the second in *Linlithgow*, the third in *Lanerk*, and the fourth in *Stirling* : Which four Burghs (before the Institution of the Convention of Burrows) did manage the Burrow-Affairs. But now by the Union these old standing Weights and Measures are to be suppress'd, and in place thereof *English* standarts conform to those in the Exchequer at *Westminster*, are to be the Universal fixed Rules of Weight and Measure in *Scotland* ; and are now come down to be set up in, and kept by the fore-said Burghs to whom the keeping of our old standarts did belong. And it is incumbent upon the Justices of Peace, to see to the due and universal Observance thereof.

6. But yet the Measure and Weight of Things in Contracts, is sometimes determined by the nature thereof, and sometimes by the place of Delivery, sometimes again by the Quality of the Goods. So in the case of an Obligation to deliver Goods according to a certain Measure, whereof the Denomination is common, and the Quantity different in several Places, the Measure observed

served in the place of Delivery is to be the Rule (a). Unless the Quantity be determined expressly, or tacitly, either by the naming of some other place ; or by the Quality of the Goods, as so many Tunsof *Orleans* Wine promised must be delivered according to the Measure of *Orleans*, whatever be the place of delivery ; Or by the nature of the Contract, when a certain Quantity is given in Loan, to be restored in another Place, which obligeth to Restitution according to the individual quantity received (b).

7. The main design of this Appendix was to give an account of the *Scots* and *English* Weights and Measures, compared and proportioned together : But after it is thus far advanced at the Press an emergent Difficulty obligeth me to break off here abruptly, and to lay aside the thoughts of adjusting these Measures till some other occasion.

(a) l. 71. ff. de Contrah. Empt. l. 3. ff. de Reb. Ant. Jud. Possid. l. 21. ff. de Oblig. & Act. l. 11. Cod. ubi Conven. quicerto loco. (b) Burgundus ad Consuetud. Flandriæ, Tract. 4. N. 28, 29. Voet. Comment. in Pandect. Lib. 46. Tit. 3. N. 8.

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F I N I S.

Books wrtten by *William Forbes* Advocat, and to be sold at *John Vallange's* Shop on the North-side of the Street, a little above the Cross of *Edinburgh*.

A Methodical Treatise concerning Bills of Exchange. Wherein is an Account of the Rise and Progress of Exchange; The Nature and Kinds of it Explained; The prevailing Custom of Merchants Illustrated and Confirm'd from the Civil Law, the Authority of Lawyers and Writers, ancient and modern, forein Statutes and Sentences of Courts, Acts of Parliament, and Decisions of the Lords of Session; and all curious and useful Cases, Questions and Controversies touching Bills fairly stated and discuss'd according to the Analogy of the *Scots* Law. 8vo.

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The Duty and Powers of Justices of Peace in this part of Great-Britain called Scotland, with an Appendix concerning Weights and Measures. 8vo.

At Edinburgh the Third day of October 1707 Years.

A Next the Petition presented to the Lords of Her Majesty's Privy Council, by Mr. William Forbes Advocat: Shewing, That where the said Lords are in use to incourage the Author of any new Book, by granting to him the sole Privilege of Printing and vending the same; and the Petitioner having composed a Treatise concerning the Duty & Powers of Justices of Peace in Scotland, which may be of use to the Countrey; And therefore craving, to the Effect after mentioned: The Lords of her Majesty's Privy Council do hereby grant to the Petitioner his Heirs and Assignes, the sole Privilege of Printing within Scotland the Treatise (whereof he is Author) Intituled, The Duty and Powers of Justices of Peace in this part of Great-Britain called Scotland. And discharge all other Persons whatsoever within the said Bounds of Scotland to Print or Reprint any of the said Books for the space of Nineteen years from the Date hereof; and that under the pain of Confiscation of the saids Books to the use of the Petitioner or his foresaids; And farther, under the Penaltie of five hundred Merks Scots to be paid by the Contraveeners to the Petitioner or his foresaids, besides the Seizure and Forfeiture above written. Extracted by me

Rob. Forbes Cls. Sti. Concilii.



